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California History

CAL.
UNIV. 1898

California.

Land pamphlets vol. 1.

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1 Hoitt. C. W. Fraudulent Mexican land claims.

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15 Decision of Judge Pratt in the Pueblo land case. Jan. 1868.

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Before the Register and Reciever

OF

Land Office,

NCISCO.

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CE to enter certain lands.
J. PERKINS, claiming
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Before the Register and Reciever

OF

United States Land Office,

SAN FRANCISCO.

In the matter of the application (No. 458), of the State of California to enter certain lands, and also, of the same applicant, (No. 454), for certain other lands, and also the application of BENJ SEVERANCE to enter certain lands.

CONTESTED BY JOHN J. PERKINS, claiming the right to enter, by preëmption, the N. W. $\frac{1}{4}$ of S. 3 T. 15 N. R. 17 W.

Township Plat filed March 27, 1867.

The proofs in this case exhibit the following facts, to wit : That one Rector first settled upon the N. W. $\frac{1}{4}$ of Section 3, which is in contest. That Perkins bought out his claim as well to said quarter as to the adjoining $\frac{1}{4}$ on Section 34 ; that the Government sub-division lines had not then been run ; that Perkins occupied a dwelling house a few rods North of the dividing line, between

Sections 15 & 34, and on the last named Section; that he subsequently erected another building immediately on the dividing line between the two sections at least one-half of the building being on the N. W. $\frac{1}{4}$ of Section 3; that this building was used for a time as a Saloon, and was afterwards leased out by Perkins, temporarily, for a School House; that a bitter and deadly feud arose between Perkins and one Hardgraves, in respect to this land: that Hardgraves was a man of violent temper, and was regarded by all his neighbours as a most dangerous man; that he had already killed two men in disputes growing out of this feud, and was under an indictement for murder, and had evaded the officers of the law, but was supposed to be still lurking in the neighbourhood; that under the belief that his life was not safe on this land, he went, temporarily, with his family to Anderson Valley, leaving another person in possession as his tenant; that the tenant, with the aid of Perkins, enclosed with a good substantial fence a good portion of the quarter in contest, and cultivated the same; that as soon as it was safe to do so, Perkins returned with his family and occupied the School House as his dwelling, and has ever since continued to

occupy it and to cultivate and use for appropriate purposes, the greater part of the quarter.

It is conceded on the other side, that Perkins is a qualified preëmptor, and it is not denied that his application is in due form. The only objection alleged against him is that he is said to be "lazy." But as his habits are not in issue here, it would have been quite as pertinent to the controversary, if the counsel had alleged that he was not a handsome man and does not understand the Hebrew tongue. If the personal qualities of the contesting parties are to cut any figure in the case, we might possibly allege, on the other side, that the counsel's clients are men who live by oppressing the poor, and use their abundant means to "freeze out" honest preëmptors for mere speculative purposes.

But on the feregoing facts, which the proofs conclusively establish, it is not easy to conceive of a case which comes more fully within the letter and spirit of the preëmption laws. He resided for years with his family, before the government lines were run, a few rods north of the line, during all which time he cultivated land, and used the quarter section in contest for pasturage. He erected a substantial building immediately on the

line, as it turned out when the survey was made; a part of the building projecting over the line. As soon as it was ascertained that the old dwelling was on Section 34, he moved into the new building and has been in it ever since.

It is well settled by numerous decisions of the Land Department, that when a preëmptor settles upon unsurveyed lands, with a view to preëmpt a particular parcel of land, and it turns out that his actual residence was not on the particular quarter which he desired, he may change his residence after the lines are run, to conform to the letter of the law.

Any other construction of the law would operate as a mockery and delusion to the settler. Not knowing where the lines are to be, he erects his dwelling in good faith, and uses the land he desires to have. It turns out that his dwelling is a few feet off the quarter which he wishes to preëmpt, and to hold that this deprives him of his preëmption, would be to pervert the whole spirit of the law. The Land Department has never so interpreted it, and it is to be hoped never will.

But it is said Perkins abandoned the land and never made it his permanent home. On the contrary, the proof shows that he adhered to it, at

the risk of his life, through years of a bitter and violent quarrel with Hardgraves; and at last went off for a short time, to Anderson Valley, after Hardgraves had killed two men, only because he could no longer remain there with safety to himhimself and his family. There is not the least foundation for the assertion that he, at any time, entertained the thought of abandoning the place. His absence was only temporary, and even then, he left a tenant in possession and paid a portion of the expense for fencing the land. It continued to be his *home*, as much as if he had never left it for an hour, and he returned to it, as soon as he considered it safe to do so.

But the counsel says he has sold and conveyed his entire claim to White, and cannot therefore be a preëmptor.

White testifies that the deed was intended as a mortgage, and that he has no claim to the land except as a security for his debt. The counsel says that the Land Department has no power to try equities of this kind, and must treat the deed as an absolute conveyance and give effect to it as such, whatever may be the equities as between the parties to it. They have not seen fit to cite authorities on this point, for the obvious reason

perhaps, that none could be found. But they content themselves with the assertion that this must be deemed in law an *abandonment* by Perkins, and that he could not take the necessary oath of a preëmptor without perjury.

This is only an empty assertion, and does not rise to the dignity of argument. On this theory the Land Department must close its eyes to the real facts of the transaction, and deprive the preëmptor of his land, when it is plain beyond dispute that he has never abandoned his claim, and seeks to enter it for his own use alone and not for another. Suppose it had been proved that the deed had been procured by fraud or duress, must Perkins lose his land, because a fraudulent and void deed had been procured from him? Much less should he lose it, when the grantee in the deed admits under oath that he does not claim the land, and holds only a mortgage on it.

I deny *in toto* the proposition that the Land Department in such a case, cannot investigate the *real facts* and give effect to them as the parties intended.

To hold the contrary, would be to overthrow the plain justice of a case on the dryest of technicalities. Where do the counsel get the author-

ity for converting the Land Department into a court of common law, with all its technicalities, and without the power to look into the real facts of a controversy? But they insist Perkins must be held to have *abandoned* his claim by this deed, notwithstanding he has been pertinaciously holding on to it from 1863 to the present day; that is to say, he must be *presumed* to have done, what the proofs plainly show he has *not* done.

They need not concern themselves to shield Perkins from the effect of the perjury, which they say he proposes to commit. But they would find it somewhat difficult to convict him of that crime, on the absurd proposition, that he would swear to a falsehood in taking the oath that he entered this land for his own benefit alone. No authorities need be cited on the plain proposition, that whatever may be the form of an instrument, it is only a mortgage if the parties so intended it. It has been so decided perhaps twenty times by the Supreme Court of this State, and I presume will not be denied to be sound law. This deed then is only a mortgage, and Perkins can, with perfect propriety, make oath that he has not, "directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which

the title which he may acquire from the Government of the United States, should inure in whole or in part, to the benefit of any person or persons except himself."

Perkins then has shown himself to be fully within both the letter and spirit of the preëmption laws; and now we propose to discuss the pretentions of his adversaries. Severance claims a portion of the quarter on the ground that he resides on an adjoining quarter. But the proof shows that he purchased from Tarwarter, who never pretended to claim any portion of this tract, nor did Severance claim any part of it, except a fraction off the eastern end, until shortly before this contest commenced. He then enclosed a few acres of it, or rather paid for a portion of the division-fence. He has never resided on any part of it, and did not enter on the Tarwater tract until 1866, whereas Perkins had been in possession from 1863. It is obvious that Severance has no just rights as a preëmptor, as against Perkins, whose claim is not only prior in time, but greatly superior in equity. The proof shows that the claim of Severance was an afterthought, prompted by Tichnor & Byxbee, who are seeking to "freeze out" Perkins on the southern end of his claim, and aiding

Severance to oust him from the northern half.

The attempt to enter the southern half of the quarter in the name of the State, is for the benefit of Tichnor & Byxbee, whose merits and sufferings are so eloquently depicted by their counsel. They are evidently very unfortunate and persecuted men, who are making great efforts to acquire Perkins' land, in order to give them the exclusive control of the navigation of the river which runs through it. We are told by their counsel that they have made incredible efforts to acquire the title to this land, and have expended fabulous sums in building booms to supply their mills. First they attempt to enter it as swamp and overflowed land, but unfortunately it is not, and never was swamp and overflowed land. The proof makes this plain beyond dispute. So that little stratagem has failed. They next got a deed from Rector for a few acres, including their boom; but unluckily Rector had no title to convey, and hence they are driven to the extremity of endeavoring to defeat the claim of Perkins, in order that they may obtain it through a state location. Their counsel tell us, that it is a "firm handling a good deal of money" and inasmuch as they consider Perkins a "lazy" fellow, with a large family,

and with no worldly estate except this quarter section of land, they doubtless suppose that in such an unequal contest they will achieve an easy triumph.

It remains to be seen whether an honest preëmptor, who at the risk of his life has sought to maintain his right to preëmpt a little spot for his home, is to be turned adrift, after five years of occupation, in order that a rich firm, "handling a good deal of money," may obtain a site for a boom to supply their mills.

WHITING & NAPHTALY,
Attorneys for Perkins.

SUPREME COURT OF THE UNITED STATES.

No. 204.

THE UNITED STATES, APPELLANTS,

vs.

AUGUSTIN YANSENS.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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GIDEON, print.

Transcript of the proceedings in case No. 266—Agustin Yansens, claimant, vs. The United States, defendant—for the place named "Lomas de la Purificacion."

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle private land claims in the State of California.

Be it remembered, that on this tenth day of June, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Agustin Yansens, for the place named "Lomas de la Purificacion," was presented and ordered to be filed and docketed, with No. 266, and is as follows, to wit:

(Vide page of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *September 9th*, 1852.

In case No. 266, Agustin Yansens, for the place called "Lomas de la Purificacion," the deposition of Pablo de la Guerra, a witness in behalf of the claimant, taken before Commissioner Henry J. Thornton, was filed, and is in the words and figures as follows, to wit:

(Vide page 4 of this Transcript.)

SAN FRANCISCO, *Jan'y* 5, 1853.

In the same case, the deposition of Antonio Maria de la Guerra, a witness in behalf of the claimant, taken before Henry J. Thornton, commissioner, was filed, and is in the words and figures as follows, to wit:

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *August* 26, 1853.

This case called: The counsel for the claimant had the evidence argued, submitted, and taken under advisement.

SAN FRANCISCO, *March* 14, 1854.

In the same case, Commissioner R. Aug. Thompson delivered the opinion of the board, confirming the claim.

(Vide page 31 of this Transcript.)

SAN FRANCISCO, *Aug.* 15, 1854.

In the same case, on motion of the U. S. law agent, the following order was made, to wit:

(Vide page 34 of this Transcript.)

To the honorable Commissioners to settle private land claims in California:

The petitioner, Agustin Yansens, respectfully shows, that on the 27th day of December, A. D. 1844, Manuel Micheltorena, governor of California, by virtue of authority in him vested, granted to the petitioner the tract of land called "Lomas de la Purificacion," situate in the present county of Santa Barbara, containing three square leagues, a little more or less, according to the respective maps, all of which is fully shown in the original expediente, a certified copy of which is submitted herewith, marked "A," with a translation marked "B."

That the aforesaid grant was afterwards approved by the departmental assembly.

That on the 15th day of April, A. D. 1845, the aforesaid tract of land was duly surveyed and the judicial possession of it given to the petitioner, a copy of which act of survey is submitted herewith, marked "C," with a translation marked "D."

That the said tract of land has not been surveyed by the surveyor general of the United States, but that it was duly surveyed at the time of giving the judicial possession of it, and that its boundaries are fully described in the title-papers, and are well known.

That the petitioner has for more than 10 years, and now is in the quiet, peaceful, and undisputed possession of the aforesaid tract of land.

That he knows of no conflicting claim.

That he relies for confirmation of title upon the original papers, copies of which are submitted herewith, upon the records and minutes in the archives, now in charge of the surveyor general, and upon such other and further proofs as he may be advised are necessary.

Wherefore he prays the commissioners to confirm to him the aforesaid tract of land.

By his att'ys, HALLECK, PEACHY, & BILLINGS.

Filed in office, June 10th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Pablo de la Guerra.

Office of the Board of Commissioners
Of California Land Claims, *Los Angeles, Sept.* 9, 1852.

On this day, before Henry J. Thornton, one of the commissioners for ascertaining and settling private land claims in California, came Pablo de la Guerra, a witness produced in behalf of the claimant, Agustin Yansens, whose petition is No. 266 on the docket of the board, and was duly sworn, his evidence being given in the English.

The law agent of the United States attended.

1st question. What is your name, age, and place of residence?

Answer. My name is Pablo de la Guerra; my age is about 32 years; I reside in Santa Barbara, and am a native of California.

2d question. Examine the documents marked No. 11, and attached to this deposition, and say whether you know the signatures, and whether the papers are genuine.

Answer. I am acquainted with the signatures of Manuel Michelto-rena. Manuel Jimeno, Agustin Yansens, Juan Pablo Ayala, Nicolas A. Den, Raymundo Carrillo, Antonio Maria Ortega; their signatures to these documents are genuine, and the documents themselves, to the best of my belief, are genuine. U. S. law agent present.

PABLO DE LA GUERRA.

Sworn to and subscribed before me, this 9th of Sept., 1852.

HENRY J. THORNTON, *Com'r., &c*,

Filed in office, Sept. 9, 1852.

GEO. FISHER, *Sec'y*.

Deposition of Anto. Ma. de la Guerra.

San Francisco, *Jan'y 5th*, 1853.

On this day, before Com. Henry J. Thornton, came Antonio Maria de la Guerra, a witness in behalf of the claimant, Agustin Yansens, petition No. 266, and was duly sworn, his evidence being interpreted by the secretary.

My name is Antonio Maria de la Guerra; my age is 27 years. I was born in Santa Barbara, and live there now.

I know the rancho called "Lomas de la Purificacion," claimed by Agustin Yansens; it is situate in the county of Santa Barbara. Yansens occupied this land, in 1845, with cattle, horses, and his servants, and moved his family there in 1846. They live there now.

ANT. MA. DE LA GUERRA.

I acknowledge due notice,

R. GREENHOW,
Ass't Law Agent U. S.

Sworn and subscribed before me, this 5th Jan'y, 1853.

HENRY J. THORNTON, *Com'r, &c.*

Filed in office, Jan'y 5th, 1853.

GEO. FISHER, *Sec'y*.

1 S. D. K.

Espediente promovido por D. Agustin Yansens en solicitud del parage conocido con el nombre de "Lomas de la Purificacion."

No. 409.

[2 S. D. K.]—Sello Cuarto, Dos Reales.

Habilitado provicionalmente por la Aduana Maritima del puerto de Monterey, en el departamento de las Californias, p'a los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA,

Micheltorena.

Ex'mo S'or Gobernador y Com'te G'ral Dn. Manuel Michelt'a:

Agustin Yansens, originario de Bruselas y estabiliceder en la Republica Mejicana 18 años; casada con hija del paiz avecindado en este lugar de S'ta Barbara, con la jusificacion de V. E. comparesco y digo, que teniendo un numero de ganado mayor, caballada care y siendo de un terreno proprio para fomentarlo suplico a V. E. se sirba concedermo tres setios para laborios y prestiadero cuyo terreno se haya en la mision de S'ta Ynez, obligandome con la miscion á no perjudicar algunas uses q. se hayan alsadas y permitir ganado ó caballada q. la micion quiera prestonar ó metes interia permanesca la decha micion. Siendo sus colindantes los Ssrs. Dn. Raimundo Carrillo pr. el S. E., por el N. el colegio episcopal, por el E. finado Joaquin Vella, y por el S., la cuesta o sierra de S'n José, segun la demostrado en el diseño que devidamente acompano.

Por tanto, a V. E. suplico se sirva decretar como pedo en lo que recibire gracia y justicia. Juro no sir de malicea, &c.

S'ta Barbara, Julio 29, de 1844.

[3 S. D. K.] Ex'mo S'or. AGUSTIN YANSENS.

Como dispone el ex'mo S'or Gobernador para la precedente instancia, al M. R. P. M'ntro de S'ta Ynez, para que se sirva informar sobre su contenido.

Monterey, Ag'to 21, de 1844.

MAN'L JIMENO.

MONTEREY, *Ag'to* 14, *de* 1844.

Ynf'l el S.s'rio del despacho tomando previam'te los cera q. necesarios al efecto. MICHELT'A.

Ex'mo S'or Gobernador:

He ido a reconocer el terreno que se pretendo, y he visto q. case todo el se compone de lomas elevadas en donde la mision solo tiene algunos usos alsadas y no mas, por consig'e me pance que en los terminos, que lo pedo el S'or Yanse si le puede conceder.

S'ta Ynez, Oct'r 7, de 1844.

Fr. JOSE JOAQUIN JIMENO.

Ex'mo S'or Gobernador:

Segun el informe que anteceda de R. P. ministro de S'ta Ynes, parece que no hay inconveniente alguno para que se le conceder al S'or Yansen el terreno que solicita. Pero V. E. dispondra lo que estiene por justo.

Monterey, Deciembre 27, de 1844.

MAN'L JIMENO.

MONTEREY, *D'bre* 28, *de* 1844.

Espedase en los terminos q. se pede e informar arriba.

MICHELT'A.

[*For map see original, between pages* 8 *and* 9.]

6 S. D. K.

El ciudadano Manuel Micheltorena, General de Brigada del Ejercito Mejicano, Ayudante G'ral de la plana major, del mismo gobernador, comand'te gen'l é inspector del departamto. de las Californias.

Por cuanto D. Agustin Yansens, Mejicano por naturalizacion, ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de Lomas de la Purificacion, colindante con el rancho del coligio de Sta. Ynes, con el de Dn. Raimundo Carrillo, con el del finado Joaquin Villa y con la Sierra de San José; practicados previamente las diligencias y averiguaciones conservientes segun lo dispuesta por leyes, y reglam'tos usando de la facultades que me son conferidos á nombre de la nacion Mejicano, ha venido en concederle el terreno mencionada declarandole la propiedad, de el por las presentes letras sugetandose a la aprobacion de la Ex'mo Asemblea Departamental y bajo las condiciones siguientes: 1o. No podra venderlo, enagenarlo ni hipoticarlo, imponer ciusos, vinculo franza, ni otro gravemen alguno ni aun podra danarlo. 2o. Podra sercarlo sin prejudicar las travesias caminos y servidumbres; lo disfrutara libre y esclusivamente destinando el uso ó cultivo que mas le acomodo pero dentro de un cino fabricara casa y estara habitado. 3o. Solicitara del jues respectivo que le de la posesion juridica en vertud de este despacho por de las el cual se demarcaral los linderos en cuyos limites pondra á mas mojoneras, algunos, arboles, frutales ó silvestres de algun utilidad.

[7 S. D. K.]

4o. El terreno de que se hace donacion es de tres sitios, de ganado mayor poco mas ó menos segun explica el diseno respectivo. El juez que dire la posecion lo hara meder conforme á ordinanza quedando el sobriente que resulta á la nacion para los usos convenientes. 5o. No impedora por muy un motivo que los bienes de la Miscion de Santa Ynez, pastorien por d'ho terreno. 6o. Se contraviene á estas condiciones pedera su dicho al terreno y suá denunciable por otro. En consequencia mundo que serviendo de titulo el presente y tenendose por firme y valideio, se tome razon de el en el libro á que corresponder, y se entregar al interesado para su resguardo y demas fines. Dado en Monterey, a veinte y seite de Decembre, de mil ochocientos cuarenta y cuatro—queda tomada razon de este despacho en el libro respectivo, a fojas 13.

Office of the Surveyor General of the United States for California.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office and under my custody a portion of the archives of the former Spanish and Mexican territory, or Department of Upper California, do hereby certify that the seven preceding and hereunto attached pages of tracing paper, numbered from one to seven inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., the 8th day of June, 1852.

SAM'L D. KING, *Sur. Gen'l, Cal.*

Filed in office, June 10th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

Stamp Fourth, Two Reales.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years 1844 and 1845.

(Signed) PABLO DE LA GUERRA.

(Signed) MICHELTORENA.

[Seal of Custom-house.]

Translation of Espediente.

To his Excellency, the Governor and Commanding General Don Manuel Micheltorena:

I, Agustin Yansens, a native of Brussels, and established in the Mexican republic about eighteen years, married to a woman of the country, and resident in this place of Santa Barbara, before your excellency's justification, appear and say, that having a number of large cattle and horses, and being in want of a proper land for their encouragement, I pray your excellency to have the goodness to grant me three square leagues for cultivation and pasture land, which land is situated in the mission of Santa Ynez; I binding myself not to injure some cattle of the mission which are now wild, and also to permit any cattle or horses which the mission may wish to pasture there or put on the land while said mission shall endure. Its colindantes being Don Raymundo Carrillo on the S. E.; on the north the Episcopal college; on the east the deceased Joaquin Villa; and on the south the hill or sierra of San José, as is shown on the map which I duly transmit herewith. Wherefore, I pray your excellency to be pleased to decree as I ask, in which I will receive favor and justice.

I swear that this is not done with evil intent, &c.

Santa Barbara, July 29th, 1844.

(Signed) AGUSTIN YANSENS.

As directed by his excellency the governor, let the present petition be passed to the very reverend father, minister of Santa Ynez, that he may have the goodness to report upon its contents.

Monterey, August 21, 1844.

(Signed) MANUEL JIMENO.

MONTEREY, *Aug.* 14, 1844.

Let the Secretary of State report, taking just such steps as he may think necessary for the purpose.

(Signed) MICHELTORENA.

To his Excellency the Governor: I have been to examine the land which is asked for, and I have seen that almost all of it consists of high hills, where the mission has only a few wild cattle and nothing more; consequently I think that it may be granted to Señor Yansen in the terms in which he asks for it.

Santa Inez, October 7th, 1844.

(Signed) FRA. JOSE JOAQUIN JIMENO.

To his Excellency the Governor: According to the foregoing report of the reverend father, minister of Santa Ynez, it appears that there is no objection to there being granted to Señor Yansens the land which he asks for, but your excellency will decide as you may think just.

Monterey, December 27th, 1844.

(Signed) MANUEL JIMENO.

Monterey, *December 28th*, 1844.

Let it be issued in the terms in which it is asked for and as reported above.

(Signed) MICHELTORENA.

Citizen Manuel Micheltorena, general of brigade of the Mexican army, adjutant general of the staff of the same, governor, commanding general and inspector of the department of the Californias: Whereas Don Augustin Yansens, a Mexican by naturalization, has, for his own personal benefit and that of his family, petitioned for the land known by the name of *Lomas de la Purificacion*, bounded by the rancho of the college of Santa Ynez, by that of Don Raymundo Carrillo, by that of the deceased Joaquin Villa, and by the sierra de San José, the proper measures and examinations being previously made as required by laws and regulations, using the faculties conferred on me in the name of the Mexican nation, I have granted him the aforesaid land, declaring to him the ownership of it by these presents, subject to the approval of the most excellent departmental assembly, and under the following conditions:

1st. He may not sell it, alienate or mortgage it, subject it to any tax, entail, pledge, or other incumbrance, neither can he give it away.

2nd. He may inclose it without prejudice to the crossings, roads and servitudes, and enjoy it fully and exclusively, making such use or cultivation of it as may best suit him, but within one year he shall build a house and it shall be inhabited.

3rd. He shall request the proper magistrate to give him juridical possession in virtue of this title, by whom the boundaries will be marked out, in the limits of which he shall place, besides the bounds, some fruit or forest trees of a useful character.

4th. The land of which donation is made is three square leagues, a little more or less, as shown by the respective map; the magistrate who

may give the possession will cause it to be measured in conformity with the ordinance, leaving the surplus which may result to the nation for its convenient uses.

5th. He will not on any account prevent the claimants of the mission of Santa Ynez from pasturing on said land.

6th. If he contravene these conditions, he will lose his right to the land, and it will be subject to denouncement by another person. In consequence I order that this present serving him for a title, and being held as firm and valid, note be made of it in the corresponding book, and it be delivered to the party interested for his security and other purposes.

Given in Monterey, on the twenty-seventh of December, one thousand eight hundred and forty-four.

Note has been made of this title in the proper book on page 13.

Filed in office, June 10th, 1852.

GEO. FISHER, *Secretary*.

Doc. No. 11, *annexed to the Deposition of P. de la Guerra.*

Sello Primero, Ocho Pesos.

Habilitado provicionalmente por la Aduana Maritima del puerto de Monterey, en el departamente de las Californias, pa. los años de mil ochocientos cuarenta y mil ochocientos cuarenta y cinco.

MICHELTORENO. PABLO DE LA GUERRA.

[L. S.]

El Ciudadano Manuel Micheltorena, General de Brigada del Ejercito Mejicano, Ayudante General de la plana mayor, del mesmo Gobernador, Comandante G'ral é Ynspector del departamente de las Californias.

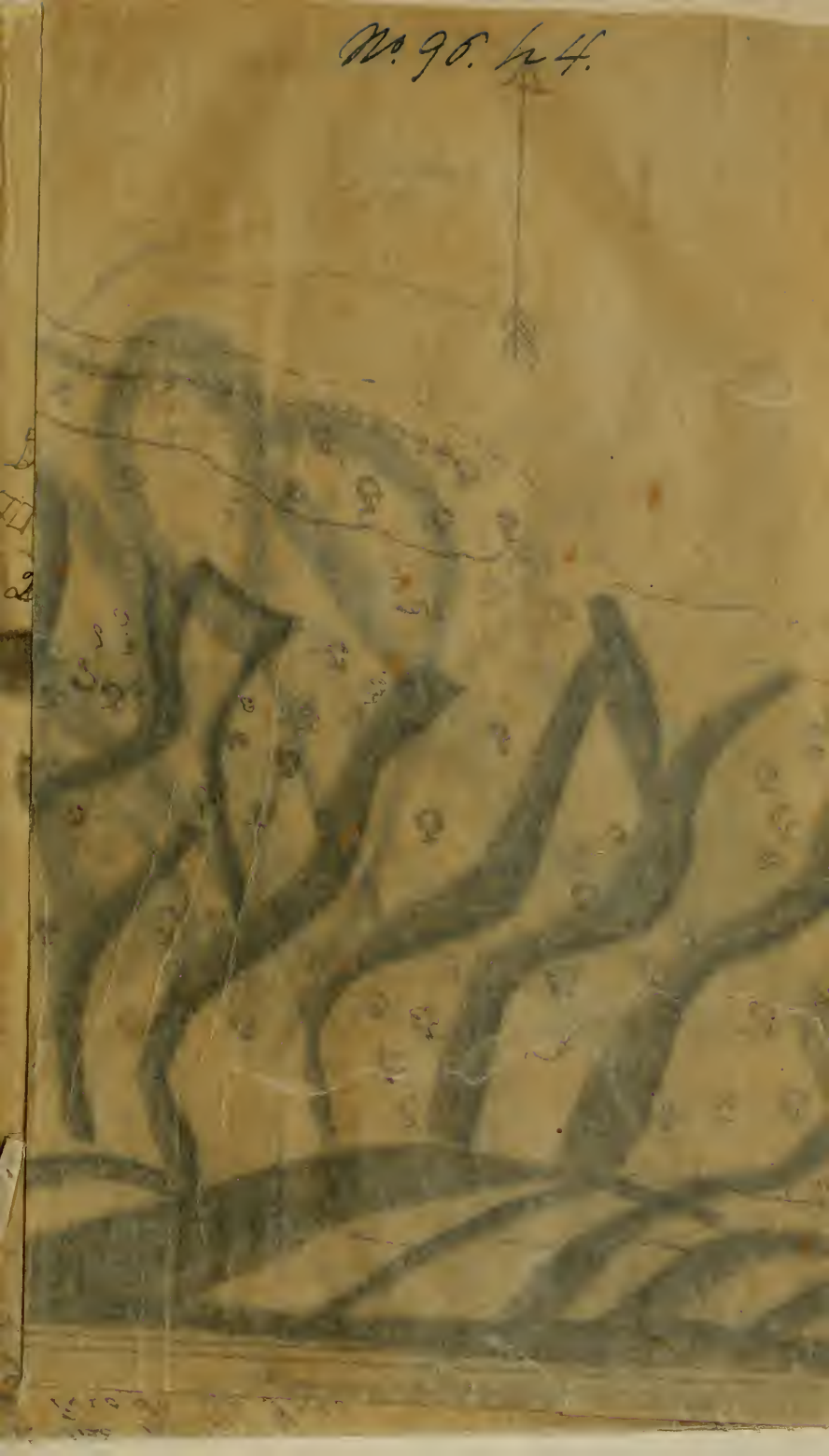
Por cuanto D. Agustin Yansens, Mejicano por naturalizacion, ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de Lomas de la Purificacion, colindante con el rancho del coligio de Sta. Ynez, con el D. Raymundo Carrello, con el del finado Joaquin Villa y con la Sierra de San José; practicadas las diligencias y averiguaciones conservientes segun lo dispuesto por leyes y reglamentos usando de las facultados que me son conferidas a nombre de la nacion Mejicana, he bruedo en concederle el terreno mencionada declarandole la propiedad de el por las presentes litras sugetandose a la aprobacion de la Ex'ma Asamblea departmental, y bajo las condiciones siguientes:

1a. No podrá venderlo, enagenarlo ni hipotecarlo imponer cinco, vinculo, fianza ne otro gravamen alguno ni aun podra donarlo.

2a. Podrá sercarlo sin perjudicar las travesias caminos y servidumbres; la disfrutara libre y esclusivamente destinandolo al uso o cultivo que mas le recomode pero dentro de un año fabricara casa y estara habitada.

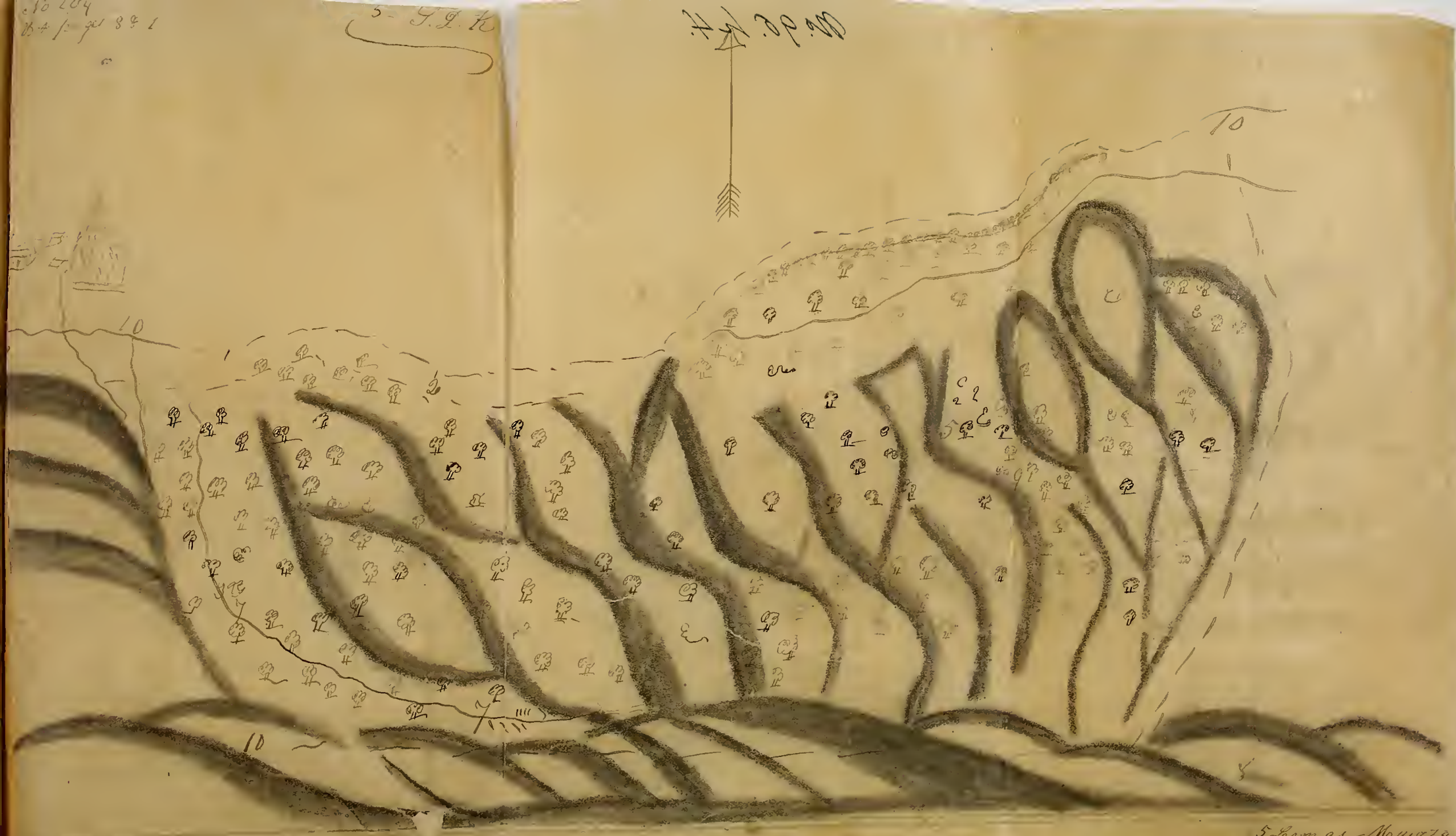
3a. Solicitara del juez respectivo q'l le de la posescion juridica en vertud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra a mas de las mojoneras algunos, arboles, frutales, ó silvestres de algun utilidad.

No. 90. h 4.



No 204
B-4 f- ga 8 9 1

5 - F. L. K



1. Sta Ynes
2. Rio de Sta Ynes
3 la Punta
4 Camino de In Mar

Escala de 5000 Vs varas

5 Lomas Mouras
6 Casa de del Juyete
7. Arroyo del
8. Rio d
9 Pueblo
10 Terreno

4a. El terreno de que se hace donacion es de tres setios de ganado mayor, poco mas o menos segun espleca el deseno respectivo. El juez que dire la posesion lo hara medir conforme á ordinanza quedando el sobrante que resulte a la nacion para los usos convenientes.

5a. No impedira por ningun motivo que los bienes de la miscion de Sta. Ynez pastorien por d'ho terreno.

6a. S contraviniere a estas condiciones pudera su derecho al terreno y sera denunciable por otro.

En consequencia mando que serviendole de titulo el presente y teniendose por firme y validero, se toma razon de el en el libro a que corresponda y se la tregue al enteresado para su resguardo y demas fines. Dado en Monterey, a veinte y siete de Deciembre, de mil ochocientos cuarenta y cuatro.

MAN'L MICHELT'A.
MANUEL JIMENO,
S'cro del Despacho.

Que du tomada razon de este despacho en el libro respectivo á fojas 13.

JIMENO.

[*For map see original, between pages* 18 *and* 19.]

1845.

Posecion Judicial en favor de D. Agustin Yansens del parage conocido con el nombre de la Purificacion.

S'or Alcalde 1o. de S'ta Barb'a:

Agustin Yansens, viceno de este puerto aute la justificacion de V. comparesco y digo q. habiendo obtenedo la concesion in propiedad del terreno conocido con el nombre de Lomas de la Purificacion por justo titulo expedido á mi favor, con f'ha 27 de D'bre de 1844, por el Ex'mo S'r Gober del departam'to, á V. suplico se sirva darme la posecion juridica de estilo con areglo á d'ho titulo cuyo documento acompano subiendose admi'tor esta en papil comun por no haler del sillado q. corresponde; juro le necessario, &c.

Sta. Barb'a, Ab'l 12, de 1845.

AGUSTIN YANSENS.

STA. BARB'A, 13 *de Ab'l, de* 1845.

En virtud de la antecedente solicitud procedase por me el presente juez á la medicion señárlamiento de linderos y posesion judicial del terreno de las Lomas de la Purificacion, q. solicita el interesado en este espediente con areglo á los documentos q. acompanà senalando pa. efectuarlo el dia quince del pres't Ab'l, pa. lo q. S. cetaran con boleta

de comparendo á los colindantes. Asi yo el Alcalde 1o. del Partido de Sta. Bab'a, lo mande, decrete y firme, actuando pr. receptona con testigos de asist'a, por falta de escribano nacion'l y publico, de q. doy fé.

NICOLAS A. DEN.

Asist'a: Raym'do Carrello,
Asist'a: Juan P. Ayala,
Ant'o M'a Ortega.

En la f'ha presente D. Agustin Yanse se le notifico el auto q. antesede y de el entendido dyo q. lo hallo y se da por cetado y lo firmo con migo y los de me asist'a, de qe. doy fé.

NICOLAS A. DEN.

Asist'a: Raym'do Carrello,
Asist'a: Juan P. Ayala,
Ant'o M'a Ortega.

En la misma f'ha se libraron los boletas q. se manden en el primer provido y para q. conste por diligencia lo rubrique.

RUBRIC.

En el rancho de la Purificacion á los quince dias del mes de Abril, de ochocientos cuarenta y cinco en cumplem'to de la cita librada a los colindantes del espresado rancho, concurrio D. Raym'do Carrello y D. José de los Santos Abila, apodarado del R. P. W. José Jimeno por parte del rancho del colegio seminareo, y entratidos de q. se heba á proceder á la mediceon señalamianto de linderos y posecion del terreno de las Lomas de la Purificacion, a favor de D. Agustin Yansen dejeron quedar entendidos y para constancia lo firmaron con migo y los de me asist'a, de que doy fé.

NICOLAS A. DEN,
JOSE DE LOS SANTOS ABILA.

Asist'a: Raym'do Carrello,
Asist'a: Juan P. Ayala,
Ant'o M'a Ortega.

En segunda yo el juez de estos autos, nombre por mediadores en la presente posecion á D. José M'a Valenzuela y D. Antonio Rodriguez, quienes prebia la aseptacion y juram'to prosederan al desempeno de su encargo, y para constancia lo pongo pr. diligencia q. firmo con los de mi asisten'a, de q. doy fé.

NICOLAS A. DEN,
JOSÉ M'A VALENZUELA,
ANTONIO RODRIGUEZ.

Asist'a: Raym'do Carrello,
Juan P. Ayala,
Ant'o M'a Ortega.

En la f'ha y en el espresado rancho se les notifico el auto q. anteseda á D. José M'a Valenzuela y D. Antonio Rodrig'z, y entendidos de el

dejeron q. aseptan y aseptaran d'ho encargo de medidores y juraron por Dios nuestro Señor y una señal de Cruz, de usarlo, fiel y legalmente, sindolo ni fraude contra persona alguna, y lo firmaron con migo y los de me asistencia, de q. doy fé.

NICOLAS A. DEN,
JOSE M'A VALENZUELA,
ANTONIO RODRIGUEZ.

Asist'a: Raym'do Carrello,
Juan P. Ayala,
Ant'o M'a Ortega.

Yncontinente yo el referido alcalde mando traire a mi presencia un cordel con q. se an de medir las tierra, de d'ho rancho y q. los medidores lo medan de á cincuenta varas lo q. firmo con los de mi asistencia, de q. doy fé.

NICOLAS A. DEN,
JOSE MA. VALENZUELA,
ANTONIO RODRIGUEZ.

Asist'a: Raym'do Carrillo,
Juan P. Ayala,
Ant'o Ma. Ortega.

En segunda y en presencia de mi el espresado alcalde los medidores mencionado, tomaron un cordel de cañamo y con una vera de medir usual Mejicano, medirea cincuenta vueces p'a hacer, lo referido medicion, y para conste lo rubrique.

RUBRIC.

En la misma fha y en el repetido rancho siendo como los tres de la tarde, yo el espresado alcalde para proceder a la medicion de tierra q. se ha de haser a D. Agustin Yansen, mando a los medidores nombrados, se ponyan en el Arroyo del Güijote, q. sirbe de lindero a D. Raym'do Carrillo, y puestos en d'ho Arroyo se cominso la medida tendiendo el cordel rumbo al oeste, y se medieron triscientos cordeles de a cincuenta varas en donde consta un arbol, con algunas señales, q. se le hecieron con acha, q. serbe de mojonera, y luigo se prosequia la medida tendiendo el cordel de el no q. serbe de lindero al colegio seminario al pu de la sierra rumbo al sur, y se medieron cincuenta cordeles, de a cincuenta varas por lo q. declararon dhos medidores tenir dho rancho de la Purificacion tres leguas de largo y media legua de ancho acompaniendo, a este espediente el titulo de consecion, tiendo de adverted q. d'ho terreno es my diriguel en lo ancho de el, y pa. constan'a lo firme por auto con los testigos de asistencia, de q. doy fe.

NICOLAS A. DEN,
JOSE MARIA VALENZUELA,
ANTONIO RODRIGUEZ.

Asist'a: Raym'do Carrillo,
Juan P. Ayala,
Ant'o Ma. Ortega.

En el referido, rancho a la Purificacion y el mesmo dia, mes y año, D. Agustin Yanse, vecino del puerto de Sta. Barbara, acompanado del alcalde y testigos de estos autos dijo, que abiendose medido los tierras de este rancho segun consta en el auto anterior tomaba y toma la verdadera y corporal fonscion de dha tierras medidas, pues le pretension, con justo titulo q. obtiene de la concesion q. de ella, le hizo el Ex'ma S'r Gob'or constitucionel del departam'te, Don Manuel Micheltorena, con fha veinta y siete de Decembre, de mil ochocientos cuarenta y cuatro, entro y pareo por ella, cerranco yerbas, esparcio pieñades de tierra, rompeo ramas de los arboles, e hizo otas demonstraciones y actos de posecion en señal de la q. dijo tomaba de dhas tierras, y yo dicho alcalde mande q. desde entouses lo triburan y reconocieron por verdadero senor y poseedor de ellas.

De todo lo espresado pedio d'ho D. Agustin Yansen, q. para memoria de lo venedero y conserbacion de sus derechos le fuese estendidos por mi el respectivo alcalde sua constancia, y lo firmo con migo y los de mi asistencia, de q. doy fé.

NICOLAS A. DEN,
AGUSTIN YANSENS.

Asist'a: Raym'do Carrillo,
Juan P. Ayala,
Ant'o Ma. Ortega.

Filed in office, Sept. 9th, 1852.
(Signed) GEO. FISHER, *Sec'y.*

Translation of Judicial Possession.

To the 1st Alcalde of Santa Barbara:

I, Agustin Yansens, a resident of this port, before your justification, appear and say: that having obtained the grant in fee of the land known by the name of "Lomas de la Purificacion," by a just title issued in my favor on the 27th of December, 1844, by his excellency the governor of the department, I pray you to have the goodness to give me the judicial possession in form in accordance with said title, which document I transmit, having the goodness to admit this on common paper for want of that of the corresponding stamp. I swear what may be necessary, &c. Santa Barbara, April 12th, 1845.

(Signed) AGUSTIN YANSENS.

Santa Barbara, *April* 13, 1845.

In virtue of the foregoing request, I, the present magistrate, will proceed to the measurement, making of boundaries and judicial possession of the land of "Las Lomas de la Purificacion," which the person interested in this espediente requests, in conformity with the documents which he transmits, designating for that purpose the fifteenth day of this month of April, for which the colindantes will be summoned by written notices. Thus I, the first alcalde of the partido of Santa Barbara, ordered, decreed, and signed, acting in virtue of my office, with

assisting witnesses, for want of a national notary public, to which I certify.

(Signed) NICHOLAS A. DEN.

Assisting witnesses:

(Signed) JUAN PABLO AYALA,
" ANTO. MA. ORTEGA,
" RAYMUNDO CARRILLO.

On the same date, present Don Agustin Yansens, he was notified of the foregoing order, and having understood it, he said that he heard it, and acknowledged notice, and signed this with me, and those of my assistance, to which I certify.

(Signed) NICOLAS A. DEN.

Assisting witnesses:

(Signed) JUAN P. AYALA,
" ANTONIO MARIA ORTEGA,
" RAYMUNDO CARRILLO.

On the same date, the summons ordered in the first decree were issued, and in testimony, I sign it in rubric.

(Rubric of N. A. Den.)

In the rancho of "La Purificacion," on the fifteenth day of the month of April, eighteen hundred and forty-five, in compliance with the summons issued to the colindantes of the aforesaid rancho, then came Don Raymundo Carrillo, and Don José de los Santos Avila, attorney in fact of the Rev. Father Fra. José Jimeno, on the part of the rancho of the Seminary College, and having understood that the measurement, marking of boundaries, and possession of the Lomas de la Purificacion, were about to be proceeded to in favor of Don Agustin Yansens, they said that they understood it, and in testimony they signed this with me and those of my assistance, to which I certify.

(Signed) NICOLAS A. DEN,
(Signed) JOSE DE LOS SANTOS AVILA,
(Signed) RAYMUNDO CARRILLO.

Ass'tg witnesses:

(Sgd.) JUAN P. AYALA,
(Sgd.) ANTO. MA. ORTEGA.

In continuation, I, the magistrate of these acts, appointed as measurers in the present possession, Don José Maria Valenzuela and Don Antonio Rodriguez, who, after the acceptance and oath, now proceed to the discharge of their office, and in testimony I make official note of it, which I sign with those of my assistance, to which I certify.

(Sgd.) NICOLAS A. DEN,
(Sgd.) JOSE MA. VALENZUELA,x
(Sgd.) ANTONIO RODRIGUEZ.

Assisting witnesses:

(Sgd.) JUAN P. AYALA,
(Sgd.) ANTO. MA. ORTEGA,
(Sgd.) RAYMUNDO CARRILLO.

On the same day, and in the aforesaid rancho, the foregoing order was made kuown to Don José Maria Valenzuela and Don Antonio Rodriguez, and having understood it, they said that they accepted, and they did accept said office of measurers, and they made oath. by God our Lord and a sign of the cross, to use it faithfully and legally, to the best of their knowledge and understanding, without deceit or fraud against any person; and they signed it with me and those of my assistance, to which I certify.

(Sgd.) NICOLAS A. DEN,
(Sgd.) JOSE MARIA VALENZUELA, x
(Sgd.) ANTONIO RODRIGUEZ.

Asstg. witnesses:

(Sgd.) JUAN P. AYALA,
(Sgd.) ANTO. MA. ORTEGA,
(Sgd.) RAYMUNDO CARRILLO.

In continuation, I, the said alcalde, ordered that there be brought to my presence a rope with which to measure the lands of said rancho, and that the measurers mark off on it fifty varas, which I sign, with those of my assistance, to which I certify.

(Sgd.) NICOLAS A. DEN,
(Sgd.) JOSE MARIA VALENZUELA, x
(Sgd.) ANTONIO RODRIGUEZ.

Asstg. witnesses:

(Sgd.) JUAN P AYALA,
(Sgd.) ANTO. MA. ORTEGA,
(Sgd.) RAYMUNDO CARRILLO.

In continuation, and before me, the said alcalde, the measurers took a rope of hemp, and with a common Mexican vara measure they marked off fifty varas for the purpose of making the aforesaid measurement, and in testimony I signed it with rubric.

(Rubric of N. A. Den.)

On the same day, and in the aforesaid rancho, being about three o'clock, afternoon, I, the said alcalde, in order to proceed to the measurement of land which has to be made for Don Agustin Yansens, ordered those appointed measurers to place themselves in the Arroyo del Guijote, which serves as the boundary with Don Raymundo Carrello, and being placed in said arroyo they commenced the measurement, drawing the cordel in a westerly direction, and measured three hundred cordels, of fifty varas each, to which there is a tree with some marks which were made on it with an axe, which serves as a boundary; the measurement was then continued, drawing the corder from the river, which serves as a boundary of the Seminary College, to the foot of the sierra, in a southerly direction, and they measured fifty cordels, of fifty varas each, on account of which the said measurers declare that said rancho of the Purificacion contains three leagues in length, and half a

league in width; the title of grant accompanying this expediente; it being to be noticed that the width of said land is very unequal; and in testimony I signed it officially with the witnesses of my assistance, to which I certify.

(Sgd.) NICHOLAS A. DEN,
(Sgd.) JOSE M'A VALENZUELA,
(Sgd.) ANTONIO RODRIGUEZ.

Ass'tg witnesses:
(Sgd.) JUAN P. AYALA,
(Sgd.) ANTO. M'A ORTEGA,
(Sgd.) RAYMUNDO CARRELLO.

In the aforesaid rancho of the Purificacion, in the same day, month and year, Don Agustin Yansen, a resident of the port of Santa Barbara, accompanied by the alcalde and witnesses of these acts, said that the lands of this rancho having been measured, as appears by the preceding order, he takes and did take the true and corporal possession of said lands measured, for they belong to him, with just title which he obtains from the grant to him made of them by his excellency the constitutional governor of the department, Don Manuel Micheltorena, dated December 28th, eighteen hundred and forty-four. He entered upon and walked over them, pulled up grass, scattered handsful of earth, broke branches of trees and performed other acts and demonstrations of possession, in sign of that which he said he took of said lands; and I, the said alcalde, ordered that from that time forth he should be held and recognised as the true owner and possessor of them. And said Don Agustin Yansen prayed that, for a future memory and the preservation of his rights, there should be issued to him by me, the alcalde, a testimony of all the foregoing. And he signed it with me and those of my assistance, to which I certify.

(Signed) NICOLAS A. DEN,
(Signed) AGUSTIN YANSEN.

Assisting witnesses:
(Sgd.) JUAN P. AYALA,
(Sgd.) ANTO. M'A ORTEGA,
(Sgd.) RAYMUNDO CARRELLO.

Filed in office, June 10th, 1852.

GEO. FISHER, *Sec'y.*

Opinion.

AGUSTIN YANSEN
vs.
THE UNITED STATES. } Case No. 266.—Lomas de la Purificacion.

This is a claim for three leagues of land, situated in the county of Santa Barbara, which was granted to the present claimant by Governor Manuel Micheltorena, on the 28 of December, 1844, and judicial pos-

session of the same duly given by the proper officer on the 15 of April, 1845. The original grant and record of judicial possession are in evidence, and their genuineness proven by the deposition of Pablo de la Guerra. The record of juridical possession, together with map contained in the espediente in the archives, to which reference is made in the grant, a traced copy of which is filed in the case as sufficient for the location and identification of the land granted. The evidence in relation to the occupation of the land is, that in the year 1845 the claimant occupied the land with his cattle and servants, and in 1846 went there to live with his family, and has continued to reside there ever since; although there is no direct testimony that he built a house within a year, yet I think the evidence very clearly leads to that conclusion.

The grant is dated on the 28th of December, 1844, and the juridical possession on the following month of April. The inference from the proof is, that after obtaining the possession he placed his cattle and servants on the land and commenced building his house, which was completed during that year, and was occupied by himself and family in the succeeding one. This I consider a substantial compliance with the conditions of the grant, and, in connection with the other proofs in the case, sufficient to entitle the petitioner to a confirmation of his claim.

Filed in office, March 14th, 1854.

GEO. FISHER, *Sec'y.*

Decree.

AGUSTIN YANSEN vs. THE UNITED STATES. } No. 266.—Lomas de la Purificacion.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is valid; and it is therefore decreed that the same be confirmed.

The land of which confirmation is made is situated in the county of Santa Barbara, and is known by the name of Lomas de la Purificacion. It is three square leagues, a little more or less, in extent, and is bounded by the rancho of the college of Santa Ynez, by that of Raymundo Carrello, of the deceased Joaquin Villa, and by the sierra de San José, extending from the arroyo del Guijote, along the river Santa Ynez, three hundred cordels, of fifty varas each, to a tree marked as a corner, and from said river to the sierra—as will more fully appear by reference to the original grant, record of juridical possession, and maps filed in the case.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office, March 14th, 1854.

GEO. FISHER, *Sec'y.*

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the southern district of California, it is hereby

Ordered, that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary; one of which transcripts shall be filed with the clerk of the United States district court for the southern district of California, and the other be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS.
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify that the foregoing thirty-four pages, numbered from 1 to 34, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 266 on the docket of the said board, wherein Agustin Yansen is the claimant against the United States, for the place known by the name of "Lomas de la Purificacion."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this thirtieth day of October, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

[G. F.]

GEO. FISHER, *Sec'y.*

UNITED STATES DISTRICT COURT,
Southern District of California.

CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify that the foregoing 36 pages, numbered from 1 to 36, both inclusive, contain a full, true, and correct copy of transcript No. 266, filed in this office, wherein Augustin Yansens is appellee and the United States are appellants, for "Lomas de la Purificacion."

In witness whereof, I have hereunto set my hand and affixed the seal of the said court, at Los Angeles, California, this 20th day of December, A. D. 1855, and of the independence of the United States of America the eightieth.

[L. S.]

C. E. CARR, *Cl'k.*

United States District Court,
Southern District of California.

Clerk's Office, Los Angeles.

Augustin Yansens, appellee, ads. The United States, appellants. } Docket No. 115. Transcript No. 266.

Be it remembered, that on the 8th day of November, A. D. 1855, in the district court of the United States for the southern district of California, the following proceedings were had, to wit:

A duly certified transcript of the proceedings and decision, and the papers and evidence upon which the said decision was founded, of the commissioners to ascertain and settle the private land claims in the State of California, when sitting as a board, in the case wherein Augustin Yansens is the claimant against the United States, for the place named "Lomas de la Purificacion," was received and filed and docketed with No. 115, and is as follows, to wit:

(Vide page 1.)

Los Angeles, *Feb'y 27th*, 1855.

In case No. 115, Augustin Yansens for "Lomas de la Purificacion," notice of appeal from the Atty. General of the United States was filed.

(Vide page 3.)

Los Angeles, *Sept. 28th*, 1855.

In same case the petition of the United States for review was filed.

(Vide page 3.)

Upon which petition, the following subsequent proceedings were had in their chronological order, to wit:

Los Angeles, *Sept. 28th*, 1855.

In same case the answer of Augustin Yansens was filed.

(Vide page 5.)

Los Angeles,

In the same case, the opinion of the court was delivered, confirming the claim, and the following decree was entered:

(Vide page 6.)

Los Angeles, *Oct. 18th*, 1855.

In same case, the following order was filed:

(Vide page 7.)

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
WASHINGTON, 17*th January*, 1855.

AUGUSTIN YANSENS
vs.
THE UNITED STATES. } 266.

Order of Appeal.

You will please take notice, that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 12th day of October, 1854, the appeal in the district court of the United States for the southern district of California will be prosecuted by the U. States.

(Signed) C. CUSHING,
Attorney General.

Filed Feby. 27th, 1855.

C. E. CARR, *Clk.*

In the District Court of the United States for the southern district of California.

Hon. Isaac S. K. Ogier, Judge.

AUGUSTUS YANSENS
ads.
THE UNITED STATES. } No. 115.—Transcript No. 266.

Petition for Review.

The petition of Pacificus Ord, attorney of the United States, for and in behalf of the United States, respectfully represents, that on or about the 10th of June, A. D. 1852, Augustus Yansens petitioned the board of U. States land commissioners for the State of California, claiming the place called "Lomas de la Purificacion," in Santa Barbara county, of the extent of three square leagues, a little more or less; that on or about the 14th of March, A. D. 1854, the said commissioners confirmed the said claim; that on or about the 8th of November, A. D. 1854, the said commissioners caused a transcript of their proceedings and decision, with the evidence in said cause, to be filed in the office of the clerk of this honorable court; that on or about the 12th of October, A. D. 1854, the honorable Caleb Cushing, Attorney General of the United States, received a certified transcript of the said proceedings, decision, and evidence in said cause from said commissioners; that thereafter, to wit, on or about the 27th of February, A. D. 1855, the said Attorney General filed, or caused to be filed, in said clerk's office a notice of the intention of the said United States to prosecute the appeal in said cause; that the land claimed is in the southern district of California, and within the jurisdiction of this honorable court. And the said United States denies generally that the said claimant has a valid title to the said land.

Wherefore, the petitioner prays, that the said Augustin Yansens or his attorney may be served with a copy of this petition; and that, after due proceedings had, the said decision of said commissioners in said cause may be reviewed, reversed, and set aside; and that the said claim or title may be decreed to be invalid. And general relief.

(Signed) P. ORD,
Attorney of the United States
for the southern dist. of California.

Filed Sept. 28th, 1855.
(Sig'd) C. E. CARR, *Cl'k.*
By J. W. ROSS, *Depy.*

In the U. States District Court for the southern district of California.

THE UNITED STATES, appellants,
vs.
AUGUSTIN YANSENS, appellee.
} No. 115.—Answer of Appellee.

Answer.

Augustin Yansens, appellee, appears by his attorneys, and for answer to the petition of the United States, filed herein, says:

That his title to the land called "Lomas de Purificacion," as set forth and described in his petition to the board of commissioners, and in the documentary and other evidence in this case, is a good and valid title; and he prays this honorable court to affirm the decision of the board of commissioners, and to decree his title to be valid.

(Signed) HALLECK, PEACHY & BILLINGS,
Attys. for Appellee.

Filed Sept. 28th, 1855.
(Signed) C. E. CARR, *Cl'k.*
By J. W. ROSS, *Depy.*

UNITED STATES DISTRICT COURT,
Southern District of California.

UNITED STATES, appellants,
vs.
AUGUSTIN YANSENS, appellee.
} No. 155.—Lomas de la Purificacion.

Decree.

This cause coming on to be heard at a stated term of said court, on an appeal from the final decision of the commissioners to ascertain and settle private land claims in the State of California, under an act of Congress approved 3rd March, 1851, on a transcript of the proceedings and decision, and of the papers and evidence on which said decision was founded, and it appearing that said transcript has been duly filed according to law, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed, that the said decision be,

and the same is hereby, affirmed. And it is further ordered, adjudged, and decreed, that the claim of the said Augustin Yansens is a good and valid claim, and the same is hereby confirmed to the land described in the record to the extent of three square leagues, for a particular description of which reference will be made to the grant, record of judicial possession, and map of file in this case.

(Signed) M. HALL McALLISTER,
Judge circuit court U. S. for the district of California.

Filed October 3d, 1855.
(Signed) C. E. CARR, *Clk.*

In the U. States District Court for the southern district of California.

Special term, Sept. 1855.

Los Angeles.

Augustin Yansens, appellee, ads. The United States, appellants. } No. 115.—Transcript No. 266.

Order of Appeal.

On motion of P. Ord, Attorney of the United States for the southern district of California, it is ordered by the court that an appeal be granted the United States to the Supreme Court of the United States, from the judgment of this court against the United States in the above entitled cause, rendered on or about the 3d day of October, A. D. 1855.

(Signed) P. ORD,
U. S. Dist. Atty.

Filed Oct. 18, 1855.
(Signed) C. E. CARR, *Clk.*

United States District Court,
Southern District of California.

Clerk's Office, Los Angeles.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify the foregoing 7 pages, numbered from 1 to 7, both inclusive, to contain a true, correct and full transcript of the record of the proceedings and of the decision of the said court, of the documentary evidence, and of the testimony of witnesses upon which the same is founded, on file in this office in case No. 115 on the docket of the said court, wherein Augustin Yansens is appellee and the United States are appellants, for "Lomas de la Purificacion."

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Los Angeles, California, this twentieth day of December, A. D. 1855, and of the independence of the United States of America the eightieth.

[SEAL.]

C. E. CARR, *Clk.*

SUPREME COURT OF THE UNITED STATES.

No. 121.

THE UNITED STATES, APPELLANTS,

vs.

ANDRES YBARRA.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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GIDEON, Print.

Transcript of the proceedings in case No. 395—*Andres Ybarra, claimant,* vs. *The United States, defendant—for the place named "Los Encenitos."*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle private land claims in the State of California.

Be it remembered, that on this sixteenth day of October, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Andres Ybarra, for the place named "Los Encenitos," was presented, and ordered to be filed and docketed with No. 395, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition, the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *November* 10*th*, 1852.

In case No. 395, Andres Ybarra, for the place named Los Encenitos, the deposition of S. Arguello, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with documents marked H.H, Nos. 1 and 2, and translations thereof marked C and E, annexed thereto, was filed.

(Vide page 4 of this Transcript.)

SAN FRANCISCO, *September* 19, 1853.

Case No. 395 was called, and, on motion of the counsel for the claimant, was ordered to the foot of the docket.

SAN FRANCISCO, *July* 21*st*, 1854.

In the same case, the deposition of Santiago Arguello, a witness in behalf of the claimant, taken before Commissioner G. T. Burrill, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *September* 12, 1854.

Case No. 395, on motion of the counsel for the claimant, with the consent of the U. S. law agent, was ordered to the foot of the 2d class cases on the trial docket.

SAN FRANCISCO, *October* 17, 1854.

Case No. 395 was submitted on briefs, and taken under advisement by the board.

San Francisco, *October* 31*st*, 1854.

In the same case, Commissioner Alpheus Felch delivered the opinion of the board, confirming the claim.

(Vide page 29 of this Transcript.)

And the following order was made, to wit:

(Vide page 32 of this Transcript.)

Petition.

To the Board of Commissioners for ascertaining and settling private land claims in the State of California:

Your petitioner, Andres Ybarra, of the county of San Diego, in the State of California, respectfully represents to your honorable board, that he claims a certain tract of land, called Los Encenitos, containing one league square, situated in the county and State aforesaid; that he claims the same in fee by virtue of a grant made to him under the authority of the Mexican government by Juan B. Alvarado, governor of the department of the Californias, bearing date the third day of July, A. D. 1842.

Your petitioner further shows, that he was placed in juridical possession of said land on the twenty-second day of July, in the same year, and the boundaries thereof designated and defined, and that he has been in the peaceable possession thereof ever since, and that he knows of no conflicting or interfering claim.

Your petitioner presents herewith a copy of the original grant of said land in the Spanish language, together with a translation of the same, together with a map of the land, and will make such other and further proof as may be required by the board.

Your petitioner prays your honorable board to decree his claim to said tract of land to be valid, and confirm the same.

SUTHERLAND & CARR,
Att'ys for Petitioner.

Filed in office, Oct. 16, 1852.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of S. Arguello.

Los Angeles, *Nov.* 10*th*, 1852.

On this day, before Com'r H. Hall, came S. Arguello, a witness in behalf of the claimant, Andres Ybarra, petition No. 395, interpreted by the secretary.

The U. S. associate law agent present.

In answer to inquiries by counsel for the claimant, the witness testified as follows:

My name is Santiago Arguello; my age is sixty years; and I reside at San Diego.

A paper is now shown me purporting to be a grant to Andres Ibarra, dated 13th of July, 1842.

I am acquainted with the signatures of Juan B. Alvarado, Manuel Jorrino, and José R. Arguello; their several signatures appearing on said paper I believe to be genuine. Said paper is hereto annexed and marked H.H, No. 1.

A paper is now shown me purporting to be dated 22d of July, 1842; I am acquainted with the handwriting of José Anto. Goujora, The whole of said paper is in the handwriting of said Goujora, who was a justice of the peace at the date of said paper. It is hereto annexed and marked H.H, No. 2.

I am acquainted with the Rancho Las Encenitas. It has been occupied by Andres Ybarra ever since the year 1839 or 1840.

He has a house there in which he has lived since that time, and is cultivating ground, and keeping stock on the land.

S. ARGUELLO.

Sworn and subscribed before me.

HILAND HALL, *Com'r*.

Filed in office, Nov. 10th, 1852.

(Signed) GEO. FISHER, *Sec'y*.

Deposition of Santiago Arguello.

Office of the Commissioner, G. Thompson Burrill, at Los Angeles, California.

Before me, G. Thompson Burrill, commissioner duly qualified for the taking of testimony to be used before the board of commissioners to ascertain and settle the private land claims in the State of California, personally appeared Santiago Arguello, a witness in behalf of Andres Ybarra, claimant for the land named Rancho Encenitos, numbered on the docket of said board with No. 395, who upon oath declared and saith as follows:

Questions asked by Counsel for Claimant.

Question No. 1. What is your name, age, and place of residence?

Answer. My name is Santiago Arguello; I am sixty-three years old, and I reside eighteen miles south of San Diego.

Question No. 2. Are you acquainted with the Rancho of Encenitos in San Diego county; if yea, state all you know about its boundaries, and occupation by Andres Ybarra?

Answer. I know the rancho; the first line north from the house of Ybarra are some notable rocks, which rocks comes down the Cañada , which is the northern boundary; the second or southern boundary are also some rocks, where there is standing water, which is the ravine known by the name of San Alego; the western boundary is the north of the lake San Alego; the eastern line is the lake of , formed by the ravine of the same name, which forms a square, embracing one setio, but the measured but one half which is embraced in the above boundaries. Jose Ma. Orasco, alcalde of San Diego, measured the land, I attending as prefect of the second district. This

possession juridical was given during the year 1842 or 1843, when Micheltorena was governor; since the year 1840 or 1841 it has been occupied by the claimant, who lived there with his family in an adobe house, which consisted of a hall and two rooms; crops sown and a number of animals on the rancho, together with a garden and vineyard. I know that Ybarra is now in possession of said rancho, and has been in continued possession since 1840 or 1841. I have visited the rancho frequently since that time.

S. ARGUELLO.

Sworn and subscribed before me, this 5th day of July, A. D. 1854.
G. THOMPSON BURRILL, *Com'r.*

I hereby certify that C. E. Thom, esq'r, was present at the time that the foregoing testimony was taken, acting for, on behalf of, and by the authority of J. H. McKane, esqr., U. S. law agent.
Los Angeles, July 5, 1854.
G. THOMPSON BURRILL, *Com'r.*

Filed in office, July 21st, 1854.
(Signed) GEO. FISHER, *Sec'y.*

[*For map see original, page* 8.]

[1 S. D. K.]

Año de 1845.

Espediente promovido pr. el C'no Andres Ybarra, ampliacion al que posea, y la solicitud de medio sitio que se falta al que tiene concedido.

(No. 541.)

[2 S. D. K.]

Ex'ma S'or Gobernador:

Andres Ybarra, recino del partido de San Diego, ante V. E. con el debido respeto comparesco y digo: Que al haberse hecho por las autoridades un reconocimiento de los terrenos de San Dieguito, y el que actualmente poseo llamado Los Encenitos se encontró que segun la concesion en mi favor se hizo por el superior gobierno departmental me faltaba para su completo alguna parte de terreno hacia el sur de la que hasta la fecha caresco pues no se me ha puesto en posecion de ella. En esta virtud a V. E. ruego encarecidamente que se digne darme el completo de d'ha concesion para la parte del oriente, y á mas de me adjudique en propiedad lo restante de ter-

[3 S. D. K.]

reno que resultare sobre al mismo, rumbo que se halla completamente baldio, yá mas de ser coto se lo impone de serros pocos transitados por la misma incomidad. De esta no resulta perjuicio á ninguna persona, y á mi me benificia V. E. en razon de que suis bienes estan ya acostumbrados á apesentar en estos terrenos por lo cual esperó no ser desamido de la generosidad de V. E. juro, y suplico se me dispenso el papel por no haber de sellado respectivo.

Angeles, Octubre 21, de 1845.
No se firmar.

ANGELES, *Octubre* 22, *de* 1845.

Para la presente instancia el señor sub-prefecto del partido de San Diego, para que tomando los informes que crea necesarios encita el suyo haciendo que el interesado agregue el diseño del terreno, que pretende para que con vista de todo resolver lo que fuere justo.

PICO.

SAN DIEGO, 9*bre* 29, *de* 1845.

Informe el alcalde 2o. de este lugar si el terreno, que solicita el interesado es valdio y si pertenece apropiedad particular concluido. Vuelva el espediente á esta sub-prefectura, lo demas que previene el superior decreto que antecede para lo cual hará que el solicitante presente el titulo de terreno que actualmente ocupa.

ARGUELLO.

S'or Prefecto:

[4 S. D. K.] En atencion al superior decreto, de V. de 29, del pasado el terreno que solocito el C. Andres Ybarra, para ampliacion del que posu, esta baldio que corresponde apropiedad particular, es lo que puedo informar conforme á justicia.

San Diego, O'bre 1o, de 1845.

J. B. ARGUELLO.

Ex'mo Señor:

Atento al superior decreto, original de V. E. en 22 de O'bre, y mandado practicar el informe respectivo del terreno que solicita el interesado, en ampliacion del que posee resulta que es valdio y no corresponde á propiedad particular. Por lo que respeta á lo que hace presente en cuanto al que de falta para el completo de un sitio que tiene concedido en el paraje de los Encunales; como que fué en aquel tiempo la autoridad que aun precencia se practica la medicion, de este citio resulta que el plano que se presente al gob'no la falta de medio sitio que comparueba, aunque no es presa su total el acto que se celebro con f'ha 5 de Mayo, de 1843, y que sedio al interesado una copia certificado para su resguardo. En vista de la es puesto y resultando que el pedido es contiguo al sitio que ocupa parese que no resulta obstaculo á que se le añada, al que si fuese de la aprobacion de V. E. aceder á la ampliacion que solicita el interesado.

S. ARGUELLO.

[5 S. D. K.] San Diego, Diciembre 10th, de 1845.

ANGELES, *Enero* 23, *de* 1846.

Vista la solicitud con que da principio este espediente el informe del S. prefecto de Sn. Diego, con lo de mas que se tuvo presente y ver convino da conformidad con la ley de 18 de Agosto, de 1828, declaro al ciudadano Andres Ybarra, dueno de todo el terreno baldio que resulte entre los linderos del terreno, que posee y las de el rancho de Lorenzo Soto, librese les el titulo correspondiente y reserve el espediente, Pio Pico, gobernador de los Californias, asi lo mandó, decretó y firmé.

PIO PICO.

J. M. COVARRUBIAS, *S'rio.*

[6 S. D. K.] Pio Pico, vocal de año de la Asamblea Departmental y Gobernador Provicional de las Californias:

Por cuanto al ciudadano Andres Ybarra, ha pretendido para su beneficio personal y el de su familia el sobrante de tierra, que resulta entre los linderos del terreno que posee, nombrado Encenitos, y los del rancho de Lorenzo Soto, practicadas previamente las averiguaciones consernientes; usando de las facultades que me son conferidas á nombre de la nacion Mejicana, ha venido por decreto de este dia en conceder le dicha tierra. Declarandole la propiedad de el la por las presentes letras, de conformidad con la ley de Agosto, de 1824, y el reglamento,

[7 S. D. K.] de 21 de Noviembre, de 1828, ó reserva de la aprobacion de la Ex'ma Asamblea Departamental, y bajo las condiciones siguientes:

1a. Podra cercarlo sin perjudicar las travesias caminos y servidumbres; lo disfrutara libre y esclusivamente destinandolo al uso que mas le acomode, pues se le concedio en ampleacion del terreno que posee.

2a. Solicitará del juez respectivo le de posecion judicial, en virtud de este despacho por el cual se demarcaran los linderos con los mojoneros necesarios.

3a. El terreno de que se le hace donacion es el que demuestra el diseño que obia en el espediente y el que se encuentra baldio entre los

[8 S. D. K.] linderos de la parte este del paraje de los Encientos y linderos oeste del rancho de Lorenzo Soto. El juez que la posecion lo hará medir conforme á ordenanza y dará, aviso al gobierno departamental, del numero de sitios de ganado mayor que contenza.

En consecuencia mando que teniendose el presente titulo, por firmé y valedero se tome razon de el en el libro, á que corresponde y se en-

[9 S. D. K.] treque al interesado para su resguardo y demas fines. Dado en la Ciudad de Los Angeles, en papel comun por no haber del sellado á veinte tres de Enero, de mil ochocientos cuarenta y seis.

S'or DON PABLO NORIEGA,

Muy Señor mio.

[10 S. D. K.] Angeles, Enero 21, de 1846.

[*For map see original, page* 13.]

OFFICE SURVEYOR GENERAL OF THE UNITED STATES FOR CAL'A.

I, Samuel D. King, Surveyor General of the United States for the State of California, and as such now having in my office and under my custody a portion of the former Spanish and Mexican Territory or department of Upper California, under and by virtue of the second section of the act of Congress providing for the survey of the public lands in California, and for other purposes, do hereby certify that the ten preceding and hereunto attached pages of tracing paper, numbered from 1 to 10 inclusive, and each of which is verified by my initials (S. D. K,) exhibit a true and accurate copy of a document on file and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially and affixed my private seal, in lieu of the seal of office, which has not been received, at the city of San Francisco, Cal., this 7th day of July, 1853.

SAMUEL D. KING,
Surveyor General Cal'a.

Filed in office, Oct. 17, 1854.

GEO. FISHER, *Sec'y.*

Year 1845.

Record of proceedings instituted by citizen Andres Ybarra, for an augmentation to that which he owns, and praying a half square league which is wanting to that which has been granted to him.

No. 541.

Translation of Espediente.

Most Excellent Señor Gobiernor:

I, Andres Ybarra, a resident of the partido of San Diego, appear before your excellency with due respect, and state, that upon an examination having been made by the authorities of the lands of San Diego, and that which I present possess, called "Los Encenitos," it was ascertained that, according to the grant which was made in my favor by the superior departmental government, there was lacking to complete the same a portion of land towards the south, the want of which I have suffered until the present time, because I have not been put in possession thereof.

Wherefore I pray your excellency will be pleased to allow me the balance of the said grant on the part of the east, and moreover to adjudge to me the ownership of the balance of the land which may result as a surplus in the same direction, which is entirely unoccupied, (valdio,) and besides being small, it is comprised of hills, and in consequence of this inconvenience little traveled over.

No damage will result thereby to any person, and your excellency will confer upon me a benefit, because my stock is already accustomed

to pasture on these lands; therefore, I hope not to be disregarded by the generosity of your excellency.

I swear, &c., and beg to be pardoned the paper, because there is none of the proper seal.

(I do not know how to sign.)

Angeles, Oct. 21st, 1854.

(The following is the marginal decree upon the foregoing :)

ANGELES, *October 22d*, 1845.

Let this petition referred to the Señor Sub-prefect of the partido of San Diego, in order that after obtaining such reports as he may deem necessary, he may omit his own, causing the interested to annex the plot of the land which he petitions for, so as in of the whole to deliver what may be just.

(Signed) PICO.

SAN DIEGO, *November 29th*, 1845.

The second alcalde of this place will report whether the land which the interested party solicits is vacant, or whether it belongs to the property of any individual; and having complied herewith, he will return the espediente to this prefecture for the rest, that the foregoing superior decree requires; for which purpose he will require the petitioner to present the title to the land which he at present occupies.

(Signed) ARGUELLO.

Señor Sub-prefect :

In attention to your superior decree of the 29th ult'o, the land which citizen Andres Ybarra solicits in augmentation of that which he possesses is vacant, and does not belong to the property of any individual. This is what according to justice I can report.

San Diego, December 1st, 1845.

(Signed) JOSE R. ARGUELLO.

Most Excellent Señor :

In attention to the superior marginal decree of your excellency, of the 22d of October, and having been ordered to make the proper report relative to the land, which the interested party solicits in augmentation of that which he possesses, it results that it is vacant, and does not belong to the property of any individual with respect to what he *to what he* represents relative to that which he lacks to complete the square league which has been granted to him at the place of "Los Encenitos," as at that time I was the officer in whose presence the measurement of this site was made; it resulted, that by the plat which was presented to the government, it fell short a half square league, which is corroborated by the act which was celebrated on the fifth day of May, one thousand eight hundred and forty-three, although it does

not express the total, and that a certified copy thereof was given to the interested party for his security.

In view of the foregoing, and it appearing that the land petitioned for is contiguous to the site which he at present occupies, no obstacle seems to be presented to the granting to him the addition to that which he has, if your excellency should deem proper to accede to the augmentation which the interested party solicits.

San Diego, December 13th, 1845.

(Signed) S. ARGUELLO.

ANGELES, *January* 23*d*, 1846.

Having considered the petition with which this espediente begins, the report of the prefect of San Diego, with every thing else necessary to consider and examine in conformity with the law of the eighteenth of August, one thousand eight hundred and twenty-four, and the regulation of the twenty-first of November, one thousand eight hundred and twenty-eight, I declare citizen Andres Ybarra to be the owner of all the public land which may result between the boundaries of the land which he possesses, and those of the rancho of Lorenzo Soto.

Let the corresponding title be delivered to him, and this espediente be reserved.

I, Pio Pico, Governor of the Californias, thus commanded, decreed, and signed it.

(Signed) PIO PICO.

(Signed) JOSE M'A COVARRUBIAS,
Secretary.

Pio Pico, Member of the Departmental Assembly, and Provisional Governor of the Californias.

Whereas citizen Andres Ybarra, for his personal benefit and that of his family, has petitioned for the surplus land which may result between the boundaries of the land which he possesses, called "Encenitos," and those of the rancho of Lorenzo Soto, the investigations relative thereto having been previously made in the exercise of the powers which are conferred on me in the name of the Mexican nation, by a decree of this day, I have concluded to grant to him the said land, hereby declaring unto him the ownership thereof in conformity with the law of the eighteenth of August, one thousand eight hundred and twenty-four, and the regulations of the twenty-first of November, one thousand eight hundred and twenty-eight, subject to the approval of the most excellent departmental assembly, and under the following conditions:

1st. He may enclose it without obstructing the crossings, roads, and servitudes. He shall enjoy it freely and exclusively, devoting it to the use most suitable to him, since it is granted to him in augmentation of the land which he possesses.

2d. He shall request the proper justice to give him the juridical pos-

session by virtue of this patent, by whom the boundaries shall be designated by the necessary landmarks.

3d. The land hereby granted is delineated on the plat which forms a part of the expediente, and that which is found to be vacant between the boundaries of the eastern side of the place of the "Encenitos" and the western boundaries of the rancho of Lorenzo Soto.

The justice who may put him in possession thereof will cause it to measured according to the ordinance, and shall give notice to the departmental government of the number of square leagues which it contains.

Therefore I order that the present title, being held as firm and valid, an entry be made thereof in the book to which it corresponds, and that this be delivered to the interested party for his security and other purposes.

Given at the city of Los Angeles, on common paper, because there is no stamped, on the twenty-third day of January, one thousand eight hundred and forty-six.

I, George Fisher, secretary to the U. S. land commission to ascertain and settle private land claims in the State of California, hereby certify the foregoing to be a true and correct translation of a Spanish document, in case No. 395, wherein Andres Ybarra is the claimant vs. the United States, for the place named "Las Encenitos," now on file in this office.

In testimony whereof I have hereunto signed my name, office of the secretary of the above named commission, at the city of San Francisco, Cal., this 10th day of October, A. D. 1854.

GEO. FISHER, *Sec'y.*

Filed in office, Oct. 10th, 1854.

(Signed) GEO. FISHER, *Sec'y.*

Doc. H.H, No. 1, *annexed to the Deposition of S. Arguello.*

Sello 1o, Seis Pesos.

Habilitado provicionalmente por la aduana maritima de Monterey, para los años de 1839 y 1840.

ALVARADO. ANTO. MA. OSIO.

Valga para el año de 1840.

ANTONIO MA. OSIO.

Juan B. Alvarado, Gobierno Constitucional del Departamento de las Californias:

Por cuanto el ciudadano Andres Ybarra ha pretendido para su beneficio personal y el de su familia, un sitio de ganado mayor entre la Cañada de San Alejo y las Encenitos, colindante con el terreno del Ciudadono Juan Marron y el Ciud'o Maria Marron, practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por las leyes y reglamentos; usando de las facultades que me son con-

feridas á nombre de la nacion Mejicana, he benido en concederlee el terreno mencionado declarandole la propiedad de el, por las presentes letras sugetandose a la aprovacion de la ex'ma junta departmental y bajo las condiciones siguientes:

1o. Podra cercarlo sin perjudicar las travecias caminos y servidumbres: lo disfrutara libre y esclusivam'te destinandole al uso que mas le acomode, pero dentro de un año fabricará casa y estará habitada.

2o. Solicitara del juez respectivo que le de posecion juridica en virtud de este despacho por el cual se demarcaran, los linderos en cuyos limites pondra silvestres de alguna utilidad.

3o. El terreno de que se hace mencion es de un citio de ganado mayor, poco mas ó menos segun esplica el deseño que corre en el espediente. El juez que diere la posecion lo hará medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

4o. Si contraviniere á estas condiciones perdera su derecho el terreno y será denunciable por otro.

En consecuencia mando que teniendose por firme y valedero este titulo, se tome razon de el en el libro respetivo y se entreque al interesado para su resguardo y demas fines.

Dado en Monterey, á trece de Julio, de mil ochocientos cuarenta y dos.

JUAN B. ALVARADO.
MAN'L JIMENO, *S'rio.*

Queda tomada razon de este despacho en el libro de asuntos sobre adjudicacion de terrenos valdios, ó fojas 14.

El ex'mo s'or gobernador, ha dispuesto se tome razon de esta consecion en la prefectura del segundo distrito.

JIMENO.

Queda tomado razon de este titulo en el libro de asuntas llebado en lo secretario de esta prefectura del 1o distrito, ó fojas 4.

Angeles, Julio 19, de 1842.

JOSE R. ARGUELLO, *S'rio.*

Filed in office, Nov'r 10, 1852.

GEO. FISHER, *Sec'y.*

Seal 1st, Six Dollars.

Provisionally furnished by the maritime custom-house of Monterey, for the years 1839 and 1840.

ANTONIO MA. OSIO.

ALVARADO.

It may avail for the year 1842.

[STAMP.] ANTONIO MA. OSIO.

"C."—*Translation of Grant.*

Juan B. Alvarado, Constitutional Governor of the Californias:

Inasmuch as the citizen Andres Ybarra has solicited for his personal benefit and that of his family, one "sitio de ganado mayor," between

the Cañada of San Aliso and the Encenitos, bounded *bounded* by the land of the citizen Juan Osuma and the citizen Juan Maria Marron, having previously complied with the obligations and made the investigations required by the laws and regulations concerning them; using the powers conferred upon me, in the name of the Mexican nation I have concluded to grant him the land mentioned, declaring it his property by these presents, subject to the approval of the excellent departmental junta, and under the following conditions:

1st. He may enclose it without prejudice to cross-roads and servitudes, enjoying it freely and exclusively, using or cultivating it in the manner most agreeable to himself, but within the space of one year he shall build a house upon it, and have it inhabited.

2nd. He shall solicit the respective judge to give him juridical possession in virtue of this patent, by whom shall be marked the boundaries, on whose limits shall be placed, at the proper points, for landmarks, some fruit or forest trees of some utility.

3rd. The land of which mention has been made is of one "sitio de ganado mayor," as explained by the plat or design which is annexed to the respective espediente.

The judge who shall give the possession shall have it measured conformably to the ordinance, providing for the remainder, which reverts to the nation for its convenient uses.

4th. If he violate these conditions he shall lose his right to the land, which may be denounced by another.

In consequence, I order that this title, being held firm and valid, be recorded in the respective book, and delivered to the interested party for his security and further purposes.

Given at Monterey, the third of July, one thousand eight hundred and forty-two.

JUAN B. ALVARADO.
MAN'L JIMINO, *Secretary.*

This decree is registered in the book of entries of adjudication of vacant lands, at page 14.

JIMINO.

His excellency, the governor, has directed that this concession be registered in the prefecture of the second district.

JIMINO.

This title is registered in the book of entries in the office of this prefecture of the second district, at page 4.

Angeles, July 17, 1842.

JOSE R. ARGUELLO, *Sec'ty.*

Filed in office, Oct. 16th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

Document H.H, No. 2, annexed to the Deposition of S. Arguello.

San Diego, *Julio 22d, de* 1842.

Hallandose concluydas estas diligencias de este espediente pertenecientes al rancho de las Encenitos, de se le testimonio al Ciudadano

Andres Ybarra ynteresado á ellas para su seguridad y usos que le convengan.

El Ciudadano José Antonio Gongora, juez de paz, asi lo provego mando, y firmo, con los testigos de ass'a, segun d'ro, doy fee.

JOSE ANTONIO GONGORA,
BONIFACIO LOPEZ,
JOSE MARA ALVARADO.

Razon alas, 22 dias del mes de Julio, de 1842. Queda librado al interesado el testimonio que se refiere en el auto anterior y para constancia lo rubrique.

Filed in office, Nov. 10th, 1852.

GEO. FISHER, *Sec'y*.

San Diego, *July 22d*, 1842.

Being concluded, the process of this expediente pertaining to the rancho "de los Encenitos," let a copy be given to the citizen Andres Ybarra, the person interested in it, for his security and proper uses.

The citizen José Antonio Gongora, judge of the peace, has so decreed, commanded and signed, with the witnesses of assistance, according to law, of which I give faith.

JOSE ANTO. GONGORA,
BONEFACIO LOPEZ,
JOSE MA. ALVERADO.

Entry.

On the 22d day of the month of July, 1842. The copy which is referred to in the above act has been delivered to the interested party for his protection, which I attest.

Filed in office, Oct. 16th, 1852.
(Signed) GEO. FISHER, *Sec'y*.

Andres Ybarra
vs.
The United States.

For the place called "Los Encenitos," in San Diego county, containing one square league of land.

In his petition the claimant alleges that the land claimed, being one square league, was granted to him by Governor Juan B. Alvarado, on the 3d day of July, 1842, and that juridical possession was given to him, and the boundaries designated and defined, on the second day of July, in the same year.

The grant, duly proved, is given in evidence. A document is also presented, which appears to be a copy of the concluding sentence of a testimonial of juridical possession, dated July 22, 1842. If such was

the true character of the instrument, its mutilated condition renders it of no avail for the purposes for which it was designed.

It contains no statement of the act done by the alcalde in measuring the land, and no description of the premises designated. It affords no aid, therefore, to the claimant in establishing a segregation of the premises claimed.

The testimony in the case, however, shows that juridical possession of the place was given to the grantee, and the witness, who as prefect attended to the official act, gives a description of the boundaries of the rancho, which were designated, as we understand the testimony at the time. The land included within the designated limits is stated as one square league, the quantity granted.

The witness states, after specifying the boundaries of the square league, that they measured but one-half of the same.

We find some difficulty in understanding fully the reason for or character of this limitation; but as the boundaries appear to be well defined, the premises being located according to the grant and embracing only the quantity granted, and as no substantial reason appears why the grantee should be deprived of any portion of it, we are of opinion that the segregation of the land is sufficient, and the entire league embraced within the limits described must be regarded as assigned to him under the grant. The proof shows that the claimant has lived with his family on the place, and has cultivated and improved the land, during the last fourteen years. It has been his homestead ever since 1840.

The claim is adjudged valid, and a decree will be entered accordingly. Confirmed.

Filed in office, Oct. 31, 1854.

(Signed) GEO. FISHER, *Sec'y.*

Decree.

ANDRES YBARRA vs. THE UNITED STATES. } 395.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is valid, and it is therefore decreed that the same be confirmed.

The land of which confirmation is hereby made is situated in San Diego county, and is known by the name of Los Encenitos, and the same on which said petitioner resides; and is bounded and described as follows, to wit:

The first line, north of the house of said Ybarra, is some notable rocks, from which rocks comes down the Cañada Bertequitus, which is the northern boundary; the second, or southern boundary, is some rocks where there is standing water, which is the ravine known by the name of San Alego; the western boundary is the mouth of the Lake San Alijo; the eastern line is the lake of Batiquitas, formed by

the ravine of the same name, which forms a square, the same containing one square league of land, a little more or less.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office, Oct. 31, 1854.
(Signed) GEO. FISHER, *Sec'y.*

And it appearing to the satisfaction of this board, that the land hereby adjudicated is situated in the southern district of Cal., it is hereby ordered, that two transcripts of the proceedings, and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the sec'y, one of which transcripts shall be filed with the clerk of the United States district court for the southern district of Cal., and the other be transmitted to the Att'y Gen'l of the Un. S.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the Board of Commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-two pages, numbered from 1 to 32, both inclusive, to contain a true, correct, and full transcript of the record of the proceeding, and of the decision of the said board, of the documentary evidence, and of the testimony of witnesses upon which the same is founded, on file in this office, in case No. 395, on the docket of the said board, wherein Andres Ybarra is the claimant against the United States, for the place known by the name of "Los Encenitos."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, [G. F.] California, this twenty-fifth day of May, A. D. 1855, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

UNITED STATES DISTRICT COURT,
Southern district of California.

CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify that the foregoing thirty-two pages, numbered from 1 to 32, both inclusive, contain a full, true and correct copy of transcript No. 395, filed in this office, wherein Andres Ybarra is appellee and the United States appellants, for "Los Encenitos."

In testimony whereof, I have hereunto set my hand and af- [SEAL.] fixed the seal of said court at Los Angeles, California, this

nineteenth day of January, A. D. 1856, and of the independence of the United States of America the eightieth.

C. E. CARR, *Cl'k.*

DISTRICT COURT UNITED STATES,
Southern district of California.

CLERK'S OFFICE, LOS ANGELES COUNTY.

ANDRES IBARRA, appellee, ads. THE UNITED STATES, appellants. } Docket No. 228. Transcript No. 395.

Be it remembered, that on the 6th of June, A. D. 1855, in the district court of the United States for the southern district of California, the following proceedings were had, to wit: A duly certified transcript of the proceedings and decision of the commission to ascertain and settle the private land claims in the State of California, when sitting as a board, in the case wherein Andres Ibarra is the claimant against the United States for the place named "Los Encenitos," was received and filed, and docketed with No. 228, and is as follows, to wit:

(Vide page 1.)

LOS ANGELES, *July* 21*st*, 1855.

In case No. 228, Andres Ibarra for "Los Encenitos," the notice of appeal from U. S. attorney general was received and filed.

(Vide page 3.)

LOS ANGELES, *Oct.* 12*th*, 1855.

In same case the petition of U. States for review was filed.

(Vide page 4.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *Oct.* 12*th*, 1855.

In same case the answer of appellee was filed.

(Vide page 6.)

LOS ANGELES, *Oct.* 16*th*, 1855.

In same case the opinion of the court confirming the claim was delivered, and the following decree entered.

(Vide page 8.)

LOS ANGELES, *Oct.* 18*th*, 1855.

In same case the order for appeal, on motion of P. Ord, U. S. district attorney, was filed.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
WASHINGTON, *June* 13, 1855.

395.—Los Encenitos.—Andres Ybarra, Claimant.

You will please take notice, that in the above case, decided by the commissioners to ascertain and settle private land claims in the State

of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 9th day of April, 1855, the appeal in the district court of the United States for the southern district of California will be prosecuted by the United States.

Very respectfully,

C. CUSHING, *Attorney General.*

Filed, July 21st, 1855.

C. E. CARR, *Cl'k*,
By A. H. CLARK, *Dep'y.*

In the District Court of the United States for the southern district of California.—Hon. Isaac S. K. Ogier, Judge.

ANDRES YBARRA
vs.
THE UNITED STATES. } No. 228. (Transcript No. 395.)

The petition of Pacificus Ord, Attorney of the United States for the southern district of California, for and in behalf of the United States, respectfully represents, that on or about the 18th day of October, A. D. 1852, Andres Ybarra petitioned the United States land commissioners for the State of California, claiming a certain tract of land called Los Encenitos, containing one square league, situated in San Diego county, California; that on or about the 31st day of October, A. D. 1854, the said commissioners confirmed the said claim; that thereafter, to wit, on or about the 9th day of April, A. D. 1855, the Hon. Caleb Cushing, Attorney General of the United States, received a duly certified transcript of the proceedings, papers and decision, with the evidence of the said commissioners in said cause; that thereafter, to wit, on or about the 6th day of June, A. D. 1855, the said commissioners filed or caused to be filed with the clerk of this hon'ble court a duly certified transcript of their proceedings, with the evidence, papers and decision in said cause; that thereafter, to wit, on or about 21st day of July, A. D. 1855, the said attorney general filed or caused to be filed with the said clerk of the said court a notice of the intention of the United States to prosecute the appeal in said cause.

Your petitioner denies generally all the allegations of said petition, and he denies further the validity of the right, title or claim of the said Andres Ybarra to the said land claimed as aforesaid.

And your petitioner says, that the land claimed as aforesaid is situate in the southern district of California and within the jurisdiction of this hon'ble court, wherefore petitioner prays that the said Andres Ybarra, or his attorney, may be served with a copy of this petition, and that after due proceedings had the said decision of the said commissioners may be reviewed, reversed and set aside, and that the said claim, right or title of said Andres Ybarra to said land may be decreed to be invalid, with costs and general relief.

P. ORD,
Attorney of the United States for the southern district of California.

Filed Oct. 12th, 1853.

C. E. CARR, *Cl'k*,
By J. W. ROSS, *Dep.*

In the United States District Court for the southern district of California.

ANDRES YBARRA ads. THE UNITED STATES. } No. 228.

The respondent, for answer to the petition filed in this cause, answers and says: It is true that the land mentioned in said petition and in said transcript of the proceedings before the said Board of Commissioners, lies within said southern district of California and within the jurisdiction of this court.

But this respondent denies that his title to the said land is invalid, and avers that his title is valid, and prays that the decision of the said board be affirmed, and his title be decreed to be valid.

THOS. W. SUTHERLAND,
Att'y for respondent, Andres Ybarra.
By E. O. CROSBY, *of Counsel.*

It is hereby stipulated on the part of the respondent, Andres Ybarra, that this cause be submitted at any time hereafter upon the papers, without argument on his part.

Angeles, Oct. 11, 1855.

THOS. W. SUTHERLAND,
Att'y for Ybarra.
By E. O. CROSBY, *of Counsel.*

Filed, Oct. 12th, 1855.

C. E. CARR, *Cl'k.*
By J. W. ROSS, *Dep'y.*

In the United States District Court for the southern district of California.—Special Term, Sept., 1855.—Los Angeles.

ANDRES YBARRA, app'ee, ads. THE UNITED STATES, app'lts. } No. 228.—Transcript No. 395.

On motion of P. Ord, attorney of the United States for the southern district of California, it is ordered by the court, that an appeal be granted the United States to the Supreme Court of the United States, from the judgment of this court against the United States in the above entitled cause, rendered on or about the 16th day of October, A. D. 1855.

P. ORD, *U. S. Dis't Att'y.*

Filed, Oct. 18th, 1855.

C. E. CARR, *Cl'k.*
By J. W. ROSS, *Dep'y.*

District Court of the United States for the southern district of California.

THE UNITED STATES, appellants,
vs.
ANDRES YBARRA, appellee.
} No. 228.—"Los Encenitos."

This cause coming on to be heard at a special term of this court, on an appeal from the final decision of the commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress approved March 3d, 1851, upon the transcript of the decision and proceedings and the papers and evidence on which said decision was founded; and it appearing that said transcript has been duly filed, according to law, and counsel for the respective parties having been heard, it is ordered, adjudged and decreed, that the decision of the said commissioners be affirmed, and that the claim of the said Andres Ybarra to the land described in the grant in this case is a good and valid claim, and the same is hereby confirmed to the extent of one square league, and no more: Provided that the said quantity of one square league be contained within the limits called for in said grant and map to which it refers; but if there be less than said named quantity, then the claim of said appellee to said less quantity is hereby confirmed.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the southern dist. of California.

UNITED STATES DISTRICT COURT,
Southern District of California.

CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify the foregoing eight pages, numbered from 1 to 8, both inclusive, to contain a full, true and correct transcript of the record of the proceedings, and of the decision of the said court, of the documentary evidence, and of testimony of witnesses upon which the same is founded, on file in this office, in case No. 228, in the docket of the said court, wherein Andres Ybarra is appellee and the United States are appellants, for "Los Encenitos."

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Los Angeles, California, [SEAL.] this nineteenth day of January, A. D. 1856, and of the independence of the United States of America the eightieth.

C. E. CARR, *Cl'k.*

SUPREME COURT OF THE UNITED STATES.

No. 174.

THE UNITED STATES, APP'TS,

vs.

GIL YBARRA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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Transcript of the Proceedings in Case No. 329.

GIL YBARRA, Claimant,
vs.
THE UNITED STATES, Defendant,

For the place named "Rincon de la Brea."

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this ninth day of September, Anno Domini one thousand eight hundred and fifty-two, before the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board in the City of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Gil Ybarra for the place named "Rincon de la Brea," was presented and ordered to be filed and docketed with No. 329, and is as follows, to wit:

(*Vide* page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, September 21st, 1852.

In case No. 329, Gil Ybarra, for the place named "Rincon de la Brea," the deposition of Manuel Requena, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with annexed document, marked No. 1, was filed:

(*Vide* page 6 of this Transcript.)

LOS ANGELES, October 19th, 1852.

In the same case, the deposition of Ygnacio F. Coronel, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed:

(*Vide* page 5 of this Transcript.)

SAN FRANCISCO, Aug. 18th, 1853.

Case No. 329 called: the counsel for the claimant read the evidence: argued, submitted, and taken under advisement by the Board.

San Francisco, December 20th, 1853.

In the same case, Commissioner Thompson Campbell delivered the opinion of the Board confirming the claim:

(*Vide* page 35 of this Transcript.)

(*Petition of Gil Ybarra.*)

To the Hon. the Board of U. S. Commissioners appointed to settle private land claims in California.

The petition of Gil Ybarra respectfully represents to your Hon'l Board, that he is the claimant of a tract of land in Los Angeles county, known as "Cañada de la Brea," bounded on the east by the valley that lies immediately next to the hills belonging to Mr. Bernardo Yorba; at the west by the brook of San Jose; at the north by the highway to Chino, and on the south by the boundaries of Mr. Ontiveras, containing one square league, a little more or less: That the same was granted to your petitioner by Governor Juan B. Alvarado on the 23d day of February, 1841, by virtue of the colonization laws of Aug. 24th, and the instructions and regulations of Nov'r 21st, 1828, and the various laws of Mexico, and the customs of the country affecting grants of land in California: Your petitioner received judicial possession of said land on or about the 24th day of March, 1841, from the proper officer of the then existing District. There is no conflicting claim to said lands, known to your petitioner. Your petitioner herewith files copies of the espediente, judicial possession, and other papers relating to this case, as well as translations of the same, all of which are respectively marked and numbered as exhibits, the originals of said papers being in the possession of your petitioner, ready to be produced and proved.

The evidence upon which your petitioner relies in this case, are the records of this grant in the office of the U. S. Surveyor-General, original papers (copies of which are herewith filed), and to which your petitioner prays leave to refer as part of this petition, and the testimony of witnesses to be produced before your Hon'l Board.

Respectfully submitted for such action as the justice and nature of the claim may require.

E. O. CROSBY,
Counsel for Claimant.

Filed in office Sept. 9th, 1852.

GEO. FISHER,
Sec'y.

Office of the U. S. Land Commission,
Los Angeles, Oct. 19th, 1852.

On this day before me, Hiland Hall, one of the Commissioners

for ascertaining and settling private land claims in California, came Ygnacio F. Coronel, a witness produced on behalf of the claimant, Gil Ybarra, whose petition is No. 329 on the Docket of the Board, and was duly sworn. His evidence being given in Spanish was interpreted by the Secretary. The U. S. Associate Law Agent was duly notified and attended.

In answer to questions by the claimant, the witness testified as follows:

My name is Ignacio Coronel, my age is fifty-eight years, and I reside in Los Angeles. I am acquainted with Gil Ybarra, and have known him ever since the year 1836. I know the Rancho Rincon de la Brea. It was granted to said Ybarra about the year 1840 or 1841. He was in the occupation of it previous to the grant; he had a house on the land, and was living in it at the time the grant was made, and at the time judicial possession was given, and he continues to live on the same place and occupy it to the present time. He has a numerous family and many descendants who occupy it like the occupancy of a town. I gave judicial possession of the land, or assisted in giving it, as stated in a paper now shown, being Exhibit No. 1, annexed to the deposition of Manuel Requena, to which my genuine signature is attached.

YG'O F. CORONEL.

Sworn to and subscribed before me.

HILAND HALL,
Com'r.

Filed in office Oct. 19th, 1852.

GEO. FISHER,
Sec'y.

(*Deposition of Manuel Requena.*)

OFFICE OF THE CALIFORNIA LAND COMMISSIONERS,
LOS ANGELES, Sept. 21st, 1852.

On this day before Hiland Hall, one of the Commissioners for ascertaining and settling Private Land Claims in California, came Manuel Requena, a witness produced in behalf of the claimant, Gil Ybarra, whose petition is No. 329 on the docket of the Board, and was duly sworn. His evidence being given in Spanish was interpreted by the Secretary of the Com'rs. The U. S. Land Agent was notified and attended.

In answer to questions by the counsel for the claimant, the witness testified as follows:

My name is Manual Requena, my age is fifty-one years, and I reside in the city of Los Angeles; I have resided in California and in this place eighteen years. I am acquainted with the handwriting of Santiago Arguello, Narcisso Botello, Gil, Ybarra, Ignacio M'a Alvarado, Ignacio Coronel, Bacilio Baldez, Juan B. Alvarado, and

Manuel Jimeno. The names of these several persons appearing on a paper now shown me, purporting to be the title paper, with an official copy of the record of judicial possession to Gil Ybarra of Rancho Cañada de la Brea, are, I have no doubt, their genuine signatures; said paper is hereto annexed and marked No. 1. I believe the whole paper is a genuine paper, and what it purports to be. The several persons who signed the paper were holding the offices therein described at the dates which the paper bears.

MANUEL REQUENA.

In answer to inquiries by the law agent, the witness says he came to California in 1834, and since that time the land described in the before mentioned paper has not been in the occupancy of any mission, and that he believes the land is not within ten leagues of the sea-coast.

MANUEL REQUENA.

Sworn to and subscribed before me.

HILAND HALL,
Com'r.

Filed in office Sept. 21st, 1852.

GEO. FISHER,
Sec'y.

Posecion á favor de D. Gill Ybarra Año de 1841.

Sello Tercero dos Reales.

Habilitado provisionalmente por la Aduana Maritima del puerto de Monterey en el Departamento de los Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

XIMENO. ANTONIO MARIA OSIO,
[AD'A MARIT'A DE MONTEREY.] *S'or Prefecto de este 2d Distrito.*

ANG'S, M'zo 15 de 1842.

Ocuna el interesado á una de los Jueces de esta Ciudad. quien le dara la posecion juridica q'e Solicita del Sitio llamado "Cañada de la Brea" q'e le ha sido concedido p'r el Gob'o Departamental.

ARGUELLO. NARCISO BOTELLO,
S'rio.

Gil Ybarra natural de este Departamento y vecino de esta jurisdicion ante V. S. con el debido respeto hago presente, que el Sup'r Gobr'no del departamento ha tenido a bien libra titulo a mi favor del parage llamado Rincon de la Brea y lugares q'e cita d'ho titulo, que hoy hetenido el deber de presentar a V. S. y necesitando empesar mis trabajos lo mas pronto q'e mesea posible p'a sacar mi ganado del lugar en donde piligra y colocarlo en el parage q'e me ha concedido el Sup'or Gob'no.

A. V. S. Suplica se sirva mandon q'e conscuente a d'ho titulo se me de la posecion ó segundad necesaria p'a poder empezar los trabajos q'e necesito p'a sa adelante y fomento q'e estoy pronto a pagar los costas q'e se originen.

Angeles, 15 de M'zo de 1841.

GIL YBARRA.

Ang'ls, Ma'zo 15 de 1841.

Como lo pido la parte y conforme con el Sup'or decreto marginal f'ha de hoy procedase a la posecion indicada. asi yo el prez que sacube decrete mandé formé con les de asist'a segun d'ho.

IGNACIO M'A ALVARADO.

As'a Y'go Coronel.
As'a Bacilio Baldez.

Sello Tercero dos Reales.

Habilitado provisionalmente por la Aduana Maritima de Monterey, en el Departamento de las Californias, para los años de mil ochocientos cuarenta, y mil ochocientos cuarenta y uno.

XIMENO.

[ad'a marit'a de mont'y.] ANTONIO MARIA OSIO.

B.

Sello 1o Seis Pesos.

Habilitado provisionalmente por la Aduana Maritima de Monterey para los años de 1839 y 1840.

ALVARADO. ANTONIO M'A OSIO.

Valga f'a los años 1841 y 1842.

OSIO.

[ad'a maritima de mont'y.] JUAN B. ALVARADO, Gobernador Constitucional del Departamento de las Californias.

P'r cuanto el Ciudadano Gil Ybarra ha pretendido para sa beneficio personal y el de en familia el parage conocido con el nombre de la Cañada de la Brea colindante al Este con la Cañada inmediata a las lomas del S'or Bernardo Yerba, al oeste con el Arroyo de San Jose al Norte con el camino real del Chino, y al Sur con los linderos del Señor Ontiveras, practicadas previa'te las diligencias y averiguanciones concemientes segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas a nombre de la Nacion Mejicana, he venido en concederle el terreno mencionada declarandole la propriedad de el per las presentes letras Sugetandose a la aprovacion de la Ex'ma Junta Depar y a las condiciones Siguientes.

1a. Podra sercarlo sin perpedicar los travesias caminos y Servidumbres; lo disfintara libre y esclusivamente destinadolo al uso ó cultivo qu mos le acomode, pero dentro de un año fabricara casa y estará habitada.

2a. Cuando se le confirme la propriedad Solicitará del Juez respectivo que le de posecion juridica en virtud de este despacho per el cual se demarcaran los linderos, en cuyos limites pendia a mas de las mojoneras algunos arboles frutales ó silvestres de alguna utilidad.

3a. El terreno de que se hace donacion es de un sitio de ganado mayor poco mas ó menos segun el diceño que corre agregado en el espediente, El Juez que dieu la posecion lo hara meder confirme a ordenanza quedando el sobrante que resulte a la Nacion para los usos convenientes.

4a. Si contraveniere a estas condicions perdera la direcho al terreno y será denunciable por otro.

En consecuencia mando que teniendose por firme y valedero este titulo se tome razon de el en el Libro a que corresponde y se entregue al interesado para su resguardo y demas fines. Dado en Monterey a veinte y tres de Febrero de mil ochocientos cuarenta y uno.

JUAN B. ALVARADO.
MAN'L. JIMENO,
S'ro.

Queda tomado razon de este despacho en el Libro de acientos sobre adjudicacion de terrenos baldios af'a 4 va.

JIMENO.

Angeles, Marzo 15 de 1841.

Con estuf'ha queda tomado razon del presente Titulo en el libro respectivo llevado en esta Prefectura af'a 2 f'te.

S. ARGUELLO.
NARCISO BOTELLO,
S'ro.

Sello Tercero dos reales.

Habilitado provisionalmente por la Aduana Maritima del puerto de Monterey en el Departamiento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

XIMENO. ANTONIO MARIA OSIO.

(Correg'da.)

En la Ciudad de Los Angeles del Departamento de las Californias á los veinte y cuatro dias del mes de Marzo de mil ochocientos cuarenta y uno, en cumplimiento al superior decrets marginal su f'ha ocho del mismo mes y año, y anuente a la solicitud del Cuida-

dano Gil Ybarra á fin de que se de la correspondiente posecion del parage nombrado la Cañada de la Brea, concedido por el Gobierno de este Departamiento cuyo titula accompaña á su indicada solicitud. Pasasi por me y testigos de asistencia al espresado sitio, y procedase á duo la correspondiente posecion previa citacion de colindantes, arreglandose al referido titulo ó despacho que se le ha conferido por el Ex'mo Señor Gobernador con f'ha veinte y tres de Febrero del presente año. El Ciudadano Ignacio M'a Alvarado, Juez 2a, de laz de esta ciudad asi lo decreté mandé y firmé por ante los tes-

[Sello Tercero dos reales.

Habilitado provisionalmente por la Aduana Maritima del puerto de Monterey en el departamento de las Californias para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

XIMENO. ANTONIO MARIA OSIO.]

(Correg'da.)

tigos de me asistencia con quienes actuo por receptoria en este papel comun por falta de sellado en la officina, Segun d'ro doy fe.

YGNACIO MARIA ALVARADO.

As'a. Yg'o Coronel.
As'a. Bacilio Baldez.

En veinte y seis de Marzo de mil ochocientos cuarenta y ano, yo el Juez que sucribe pase el aviso ó citacion correspondiente á los Señores D'n Juan Perez, Mayor Domo de la mision de S. Gabriel, D. Jose de la Luz Linares, Don Pacifico Ontiveras, y Don Bernardo Yorba, manifestandoles el objeto á que me dirigia al puerto de la Cañada de la Brea pues iba a remedulo y paner en posecion de ella á Don Gil Ybarra: de estos Señores el unico que manifestó escepcion fue D. Juan Perez, por que pensó que se iba á tomar parte del Rincon de la Puente, al que se le hizó ver que nada mas se tomaba la pura entrada á la cañada entinas se marchó sen ha-

[Sello tercero dos reales.

Habilitado provisionalmente por la Aduana Maritima del puerto de Monterey en el Departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

XIMENO. ANTONIO MARIA OSIO.]

(Correg'da.)

[Ad'a Marit'ma de Mont'y.] blar mas, la que pongo por diligencia que autoriso y firmo con los de asistencia segun d'ro.

YGNACIO ALVARADO.

Ass'a, Yg'a Coronel.
Ass'a, Basilio Valdez.

En la propria f'ha yo el Juez estando en la Boca de la Cañada de la Brea, para la practica de estas diligencias nombré dos officiales cordeleros, quienes por no saber firmar se omiten sus nombres á quienes les hise saber su nombramiento, que aceptaron bajo de juramento que ortogaron ofreciendo desempenar fielmente su en cargo lo que autorizo y firmo con los testigos de me asistencia segun d'ro.

IGNACIO ALVARADO.

Ass'a Y'GA CORONEL.
Ass'a BASILIO BALDEZ.

En el mismo dia, mes y año estando en la Orilla del arroyo de S. Jose bajo el norte, á efecto de verificar las remedidas y posecion que corresponde á D'n Gil Ybarra del sitio nombrado Cañada de la Brea previas-

[Sello tercero dos reales.

Habilitudo provisionalmente por la Aduana Maritima del puerto de Monterey en el Departamento de las Californias para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

XIMENO. ANTONIO MARIA OSIO.]

(Correg'da.)

[AD'A MARIT'A DE MONT'Y.] todos los requisitos de ley y estando auto mi y los testigos de asistencia coma tambien dos oficiales cordeleros hise meder un cordel que contenia cien varas, y atando hacia sus estremos dos Sancos de madera previa observacion y calculo, se tiro el primer cordel des de el punto norte comenzando en el radio ya plano de las lomas contigno al lindero de José de la Luz Linares con direccion al Sur aunque oblicuando la linea, y se contaron y midieron Siete mil varas, que remataron en una loma cerca de los linderos de Bernardo Yorba donde se mandó poner una mojonera. De este punto Sur se cambio la linea tirandola con direccion al Oeste y se contaron y midieron cuatro mil varas q'e remataron en una loma, q'e es la punta del lindero de Pacifico Ontiveras donde tambien se mandó poner una majonera. De este punto se tiró el cordel con direccion al Norte a bajar al radio de las otras lomas, donde-

[Sello tercero dos reales.

Habilitado provicionalmente por la Aduana Maritima del puerto de Monterey, en el Departamento de las Californias para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

XIMENO. ANTONIO MARIA OSIO.]

[AD'A MARIT'A DE MONT'Y.] se midieron y contaron siete mil varas. De hay se tiró el ultimo cordel a cerrar del rumbo Oeste al Este donde se contaron y midieron un mil varas, que remataron en el lindero de José de la Luz Linares, en cuyo sitio se le im-

puso a Ybarra pusiese sus mojoneras, habiendo comparecido los colindantes en sus respectivos terrenos para su satisfaccion y seguridad, sin hacer objecion q'e estorbase las medidas, las que quedaron cehas a satisfaccion del interesado, a quien se le reiteró la ordén de que no faltase a poner las mojoneras en los sitios marcados en señal de su posecion advertiendole igualmente no perjudicase el Rincon de la Puente aunque se alla algo distante lo q'e autorizo y firmo con mis testigos de acistencia segun d'ro Ygnacio Alvarado, ass'a, Ygnacio Coronel, ass'a, Basilio Valdez, tachaso donde tambien no vale.

De se le testimonio á la parte de los presentes diligencias q'e se hallan ya concluidas. Asi yo Ygnacio M'a Alvarado, Juez 2o de Paz, decreté, mandó y firmé segun d'ro, con los-

[Sello Tercero dos Reales.

Habilitado provicionalmente por la Aduana Maritima del puerto de Monterey en el Departamento de las Californias para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

XIMENO. ANTONIO MARIA OSIO.]

[AD'A MARIT'A DE MONT'Y.] de mi asistencia. YGNACIO M'A ALVARADO. Ass'a, Ygnacio Coronel. Ass'a, Basilio Valdez.

Concuerda con su original á q'e me remito del cual esta fielmente sacado, corregido y confrontado en estas seis fojas de papel sellado y se halla en el libro de instrumentos publicos del presente año.

En testimonio de verdad.

YGN'O M'A ALVARADO.

Ass'a Basilio Valdez.
Ass'a Ygn'o Coronel.

Nota. Se sacó el testimonio en la f'ha.

Filed in office Sep'r 21st, 1852.

GEO. FISHER,
Sec.

(*Translation of Espediente.*)

Third class stamp, two-eighths of one dollar. Issued provisionally by the maritime customs of the Port of Monterey in the Department of the Californias for the year eighteen hundred and forty and eighteen hundred and forty-one.

JIMENO. ANTONIO MARIA OSIO,
[L. S.] *Hon. Prefect of this District.*

Angeles, March 15, 1841.

Let the party in interest present himself to one of the judges of

this city, who will give him juridical possession, which he claims of the tract known as Cañada de la Brea, which has been granted to him by the government of the Department.

Angeles. NARCISO BOTELLO,
Sec'y.

I, Gil Ybarra, native of the Department and a citizen of this District, before your Honor with due respect do represent, That the Supreme Government of the Department has seen fit to make grant in my favor of the tract known as Rincon de la Brea and premises mentioned in said title, which I have duly presented to your Honor this day, and as I need to commence my labors as soon as possible to withdraw my cattle from the spot, where it is endangered, and place it on the tract which the supreme government has granted me, I solicit you to be pleased to order that, agreeably with said title, I may receive the possession or necessary security in order to be able to commence the labors which are required for improving and forwarding the place; and I am ready to pay the costs which may be occasioned.

Angeles, March 15th, 1841.

GIL YBARRA.

ANGELES, March 15, 1841.

In conformity with the petitioner's request, and according to the superior decree in the margin, dated this day, let the possession aforesaid be given. So decreed and ordered by me, the undersigned judge, and I subscribe the same with the attesting witnesses according to law.

IGN'O M'A ALVARADO.

Attest: YGN'O CORONEL.
Attest: BASILIO VALDEZ.

First class stamp six dollars. Issued provisionally by the maritime customs of Monterey for the years 1839 and 1840.

ALVARADO. ANTONIO M'A OSIO.

L. S. Good for the years 1841 and 1842. OSIO.

JUAN B. ALVARADO,
Constitutional Governor of the Department of the Californias.

Whereas the citizen, Gil Ybarra, has claimed for his own benefit and that of his family the tract known as Cañada de la Brea, bounded on the east by the valley that lies immediately next to the hills belonging to Mr. Bernardo Yorba; at the west by the brook of San Jose; at the north by the highway to Chino, and at the south by the boundaries of Mr. Ontiveros, the proper steps and investigations having previously been taken according to laws and regulations, by virtue of the powers vested in me, in the name of the Mexican nation, I do grant to him the said tract, declaring the same

to be his property by these presents, subject to the approval of the Most Excellent Departmental Assembly, and to the following conditions:—

1st. He may fence it without prejudice to crossroads, highroads, and rights of way; he shall enjoy it freely and exclusively, devoting it such use or culture as may suit him best, but within one year he shall erect a house, which shall be dwelt in.

2d. When his title shall have been confirmed, he shall solicit the judge having jurisdiction to give him juridical possession by virtue of this deed: such judge shall mark out the boundaries, in the lines of which shall be placed besides the landmarks some fruit trees, or useful forest trees.

3d. The tract hereby granted consists of one range (sitio) for large cattle, a little more or less, according to the design annexed to the minutes of the proceedings (Espediente). The judge who gives the possession will cause it to be measured according to law, any remainder there may prove to being reserved to the nation for its use and behoof.

4th. In case of non-compliance with these conditions, he shall lose his right to the land, and it may be denounced by another. Wherefore, I order that this title-deed being held as firm and valid, be recorded in the proper book and delivered to the party in interest for his protection and other purposes. Given at Monterey, February 23d, 1841.

JUAN B. ALVARADO.
MAN'L JIMENO,
Sec'y.

Recorded this title in the book of entries concerning grants of waste lands at p. 4, etc.

JIMENO.

ANGELES, March 15th, 1841.

On this date the present title is recorded in the proper book belonging to this Prefecture, p. 2, &c.

S. ARGUELLO.
NARCISO BOTELLO,
Sec'y.

Third Class Stamps, Two-eighths of One Dollar.

Issued provisionally by the maritime customs of the port of Monterey in the Department of the Californias, for the years 1840 and 1841.

XIMENO. ANTONIO M'A. OSIO.

L. S.

At the city of Los Angeles, in the Department of the Californias,

on the twenty-fourth day of the month of March, eighteen hundred and forty-one, in compliance with the superior marginal decree, dated the eighth of same month and year, and vouchsafing the petition of the citizen Gil Ybarra, to the effect that due possession be given of the tract known as *Cañada de la Brea*, granted by the Government of this Department, the title-deeds whereof are annexed to his said petition: Ordered that I repair with my attesting witnesses to the said premises and proceed to give due possession after summons to the owners of neighboring lands in conformity with said title or patent granted to him by his Excellency the Governor, dated the twenty-third of February of the present year. I, the citizen Ignacio M'a Alvarado, 2d Justice of the Peace of this city, so decreed, ordered, and subscribed in presence of

L. S. (Stamp Clause.)

my attesting witnesses, our proceedings being noted on common paper, there being no stamped paper in the office, which I certify according to law.

IGNACIO MARIA ALVARADO.

Attest: Ig'o Coronel.
Attest: Basilio Baldez.

On the twenty-sixth of March, eighteen hundred and forty-one, I, the undersigned Judge, sent the requisite notice or summons to Mess. Don Juan Perez, Stewart of the Mission San Gabriel, Don José de la Luz Linarez, Don Pacifico Ontiveras, and Don Bernardo Yorba, informing them of my motive for going to the place called Cañada de la Brea, viz: that I was going to remeasure it and give possession to Don Gil Ybarra. The only one of those gentlemen who made objection, was Don Juan Perez, because he thought a part of the Rincon de la Puente was going to be taken. It was shown to him that nothing was to be taken but the mere entrance to the valley; whereupon he left without making any other remark,

L. S. (Stamp Clause.)

which I note, certify, and subscribe with the attesting witnesses according to law.

IGNACIO ALVARADO.

Attest: Ignacio Coronel.
Attest: Basilio Valdez.

On the same date, I, the Judge, being at the mouth of the valley of the Brea, for the performance of these proceedings, appointed two official line bearers, whose names are omitted on account of their not knowing how to sign. I informed them of their appointment, which they accepted, taking the oath of office, whereby they

undertook to perform their duties faithfully, which I certify and subscribe with my attesting witnesses, according to law.

IGNACIO ALVARADO.

Attest: IG. CORONEL.
Attest: BASILIO VALDEZ.

On the same day, month, and year, on the bank of the brook of San José, on the north side, for the purpose of making the remeasurements and duly give possession to D'n Gil Ybarra of the tract called Cañada de la Brea:

(L. S.) (Stamp Clause.)

Having first complied with all the requisites of the law, I caused to be measured in my presence, and that of the attesting witnesses, likewise in presence of two official line bearers, a line one hundred varas in length, and after fastening to its extremities two wooden poles, and making observations and calculations, the first line was run from the north point, beginning in the radius where the hills become smooth, contiguous to the boundary of Jose de la Luz Linares, in a southerly direction though on an oblique line, there were counted and measured seven thousand varas, which terminated at a hill near the boundary of Bernardo Yorba, where a corner mark was ordered to be placed. From this south point the line was changed, running in a westerly direction; these were counted and measured four thousand varas, which terminated at a hill, which is the corner of the boundary of Pacifico Ontiveras, where also a corner mark was ordered to be placed. From this point the line was run in a northerly direction, towards the radius of the other hills where (L. S. Stamp Clause) there were measured and counted seven thousand varas. Thence the last and closing line was run from west to east, where there were counted and measured one thousand varas, which terminated in the boundary of Jose de la Luz Linares, at which place Ybarra was ordered to place his corner marks: the neighbors appeared at their respective lands for their own satisfaction and protection, without making any objection that could disturb the measurements, which were made to the satisfaction of the party in interest, to whom was reiterated the order not to fail to place corner marks at the places indicated in sign of his possession, he being notified likewise, not to prejudice the Rincon de la Puente, although this place is at a considerable distance; which I certify and subscribe, with my attesting, witnesses, according to law.

IGNACIO ALVARADO.

Attest: IGNACIO CORONEL.
Attest: BASILIO VALDEZ.

Effaced the words *donde tambien*, which form no part of the list.

Let certified copy be issued to the party in interest of these proceedings, which are now closed: I, Ignacio M'a Alvarada, 2d Justice of the Peace, do so decree, order, and subscribe according to law, with my attesting witnesses.

(L. S. Stamp Clause.)

IGNACIO M'A ALVARADO.

Attest: IGNACIO CORONEL,
Attest: BASILIO VALDEZ.

A true copy of the original, to which I refer, from which it was faithfully taken, corrected, and collated in these six sheets of stamp paper: said original is to be found in the book of Public Documents of the present year.

In testimony of truth.

IG'O M'A ALVARADO.

Attest: BASILIO VALDEZ.
Attest: IG'O CORONEL.

Note. The certified copy was taken on this date.

Filed in office Sept. 9th, 1852.

GEO. FISHER,
Sec'y.

Espediente Promovido por el Ciudadano Gil Ibarra en solicitud del parage conocido con el nombre de "Cañada de la Brea."

[1841. 222.]

[For map see original, page 22.]

Sello Tercero Dos Reales.

[AD'A MARIT'A DE MONT'Y.] Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el Departamento de las Californias para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

XIMENO. ANTONIO MARIA OSIO,
S'r Prefeto de cote distrito.

(*Exhibit No.* 1.)

ANG'S, Enero 7 de 1841.

Informe el Sor Juez 2° de Paz de esta ciudad si el terreno—q'e se menciona esta valdio y si pertenece á la propiedad de algun particular ó corporacion asi como si el solicitante tiene los requisitos prevenidas p'a ser atendido y vuelva á esta Prefectura p'a sus ultimos traintes.

ARGUELLO. NARCISO BOTELLO,
S'rio.

Gil Ybarra natural y vecino de este Departam'to ante V. S. con el debido respeto digo: Que los bienes de campo de mi propiedad, con q'e cuento p'a atender á la subsistencia de mi dilatada familia, los tenguo en terrenos de esta comunidad que por muy immediatas á la publacion estan espuestos á los eccesos de los malechores que me lo acaban sin poderlo yo ebitar y p'a con cerbarlos me es preciso sacarlos de donde estan y retirarlos mas y hallandose ahora valdio un pedaso de terreno que antes ocupaba la Mision de San Gabriel llamedo Cañada y Lomas de la Brea y consta del diseño adjunto.

A V. S. ocurro en solecitud de d'ho parage p'a que tenga a bien mandar formar el esped'te respectivo; y elevar esta sumisa esposicion al Sup'or Gob'no del Departam'to a tin de que si lo tiene á bien mande se me libre el titulo de estilo, que estoy pronto á pagar los gastos q'e se originen.

Ang's, D'bre 29 de 1840.

GIL YBARRA.

S. Pref'o del 2° Distrito.

El terreno q'e solicita el recino D. Gil Ybarra estay impuesto pertenece á la Mision de San Gabriel y igualmento lo he visto q'e se halla valdio con respecto á si tiene el solicitante los requisitos prevenidos por reglamentos se que los tiene por lo que V. S. dispose dra lo conv'te.

Ang's, En'o 8 de 1841.

YGN'O M'A ALVARADO.

ANG'E, En'o 8 de 1841.

Pase este Esped'te al R. P. Mtro de la Mision de San Gabriel, p'a que esponga cuanto convenga al derecho de aquella Comunidad, y vuelva p'a los demas fines consiguientes.

ARGUELLO. NARCISO BOTELLO,
S'rio.

Sello Tercero Dos Reales.

[AD'A MARIT'A DE MONT'Y.] Habilitado provicionalmante por la Aduana maritima del puerto de Monterey, en el Departamento de las Californias para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

XIMENO. ANTONIO M'A OSIO.

San Gabriel 13 de Enero de 1841.

No hay embarazo por este establecimiento p'a q'e al solicitante Gil Ybarra se le conseda el parage llamado la Cañada de la Brea con apercivimiento, de q'e reforme su diseño arreglado á lo que ubiese valdio en el parage q'e solicita, pues el diseño q'e acompaña solo es imaginario.

FR. THOMAS ESTENAVA. JUAN PERES.

ANGELES, Enero 14 de 1841.

Vuelva el presente Expediente al interesado, para q'e reforme el diseño sugetandose á lo q'e unicamente quedare valdio del terreno q'e solicita, conforme lo pide el R. P. Mtro y Mayordomo de la Mision de S'n Gabriel y concluido, vuelva a esta Prefectura para los demas fines consiguientes.

ARGUELLO. NARCISO BOTELLO,
S'rio.

Ex'mo S'or.

La Prefectura de de este 2o Distrito impuesta del presente exped'te y reformado ya el diseño conforme lo pidio el R. P. Mtro y Mayordomo de la Mision de San Gabriel con presencia de dos individuos puestos para ello p'r parte de d'ho establecimiento, cré que no hay inconveniente alguno p'a q'e se le conseda al interesado el citio q'e solicita, pues q'e a mas de ser un vecino honrado cargado de familia, tiene los bienes de campo suficientes p'a cubrirlo y demas requisitos prevenidos p'r la Ley p'a ser atendido; en la intelig'a q'e es veridico lo q'e espone en su solicitud respecto a los perjuicios q'e recibe en sus bienes de campo por no tenor un parage propio a donde reducirlos; en tal virtud V. E. dispondra lo q'e fuere de su Sup'or agrado.

Angeles, Febrero 1o de 1841.

S. ARGUELLO.

NARCISO BOTELLO,
S'rio.

Monterey, 23 de Febrero de 1841.

Vista la peticion con q'e da principio este esped'te el informe del Juez 2o de la ciudad de Los Angeles el del R. P. Mtro de San Gabriel en union del Mayordomo del mismo establecim'to, y el del S'or Prefecto del 2o Distrito, con todo lo demas que se tuvo presente y ver comvino, de conformidad con las leyes y reglamentos de la materia; declaro a D'n Gil Ybarra dueño en propiedad del terreno conocido con el nombre de Cañada y Lomas de la Brea, colindante al Este con los linderos o Lomas de D'n Bernardo Yorba, al Oeste con el Arroyo de San José, al norte con el camino del Chino y al Sur con los linderos del S'or Ontiveras en estencion de un Sitio y medio de ganado mayor poco mas ó menos. Estiendase el Despacho correspond'te tomese razon en el libro respectivo, y dirijase este esped'te a la Ex'ma Junta Departamental. El S'or D'n Juan B. Alvarada Gobernador Constitucional del Departam'to de Californias asi lo mandé, decrete y firme de que doy fée.

JUAN B. ALVARADO, Gobernador Constitucional del Departamento de las Californias.

Por cuanto el Ciudadano Gil Ybarra, ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre

de Cañada de la Brea, colindante el Este con los linderos o lomas de D'n Bernardo Yorba, el Oeste con el Arroyo de San José, al norte con el Camino del Chino, y al Sur con los linderos del S'or Ontiveras: practicadas previamente las diligencias y averiguaciones consernientes segun lo dispuesto por leyes y reglamentos usando de las facultades q'e me son conferidas a nombre de la nacion Mejicana, he venido en concederle el terreno mencionado declarandole la propiedad de el por los presentes letras, y sujetandose a la aprovacion de la Ex'ma Junta Departamental y ó las condiciones siguientes.

1a. Podra cercarlo sin perjudicar las travesias caminos y servidumbres; lo disfrutara libre y esclusivamente pero dentro de un año fabricara casa y estará havitada.

2a. Solicitará del Juez respectivo, q'e le de posecion juridica en virtud de este despacho, por el cual se demarcaran los linderos en cuyos limites pondra á mas de las mojoneras algunos arboles frutales ó silvertres de alguna utilidad.

3a. El terreno de que se hase donacion es de uno y medio Sitio de ganado mayor poco mas o menos, segun esplica el diceño q'e corre en el expediente respectivo. El Juez q'e diere la posecion lo hará medir conforme á ordenanza, que dando el sobrante q'e resulte á la nacion para los usos convenientes.

4a. Si contraviniese á estas condiciones, perdera su derecho el terreno y sera denunciable por otro.

En consecuencia mando q'e teniendose por firme y valedero este Titulo se tome razon de el en el libro respectivo y se entregue al interesado p'a su resguardo y demas fines.

Dado en Monterey á treinte y tres de Febrero de mil ochocientos cuarenta y uno.

OFFICE OF THE SURVEYOR-GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, Surveyor-General of the United States for the State of California, and as such now having in my office and under my custody a portion of the archives of the former Spanish and Mexican Territory or Department of Upper California, do hereby certify that the ten preceding and hereunto annexed pages of tracing paper numbered from one to ten inclusive, and each of which is verified by my initials (S. D. K.), exhibit true and accurate copies of certain documents on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially, and affixed my private seal (not having a seal of office), at the city of San Francisco, Cal., the 22d day of September, A. D. 1852.

SAM'L D. KING,
Surv.-Gen'l Cal.

Filed in office August 8, 1853.

GEO. FISHER,
Sec'y.

(*Exhibit No.* 3.)

The Sketch.

Third class stamp, two eighths of one dollar—issued provisionally by the maritime customs of the port of Monterey in the Department of the Californias, for the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

JIMENO. ANTONIO MARIA OSIO.

[L. S.]

ANG'S, Jan'y 7, 1841.

Let the 2d Justice of the Peace of this City report whether the tract in question is unoccupied, and whether it belongs to the property of any individual or corporation, and likewise whether the petitioner has the legal requisites to entitle his petition to be entertained, and let this be returned to this Prefecture for further action.

ARGUELLO. NARCISO BOTELLO,
Sec'y.

To the Hon. Prefect of this District:

I, Gil Ibarra, a native and resident of this Department, before your Honor with the due respect do say that I am the owner of cattle on which I rely for the support of my large family, and that I keep the same on the commons of this place, where, on account of their neighborhood to the town, they are exposed to the evil doings of wicked persons, who destroy them, without being able to prevent it; and in order to preserve my said cattle, I am obliged to remove them from where they are and place them further away. And as there is now a piece of land unoccupied, which the mission of San Gabriel formerly occupied, called Cañada y Lomas de la Brea, shown by the annexed design, I occur to your Honor as a petitioner for such tract, requesting you to order the appropriate proceedings to be instituted, and this submissive statement to be forwarded to the Sup'or Government of this Department, to the end that, if deemed meet, a grant in the usual form may issue. I am ready to pay the costs which may be occasioned.

GIL IBARRA.

Ang's, Dec. 29, 1840.

To the Hon. Prefect of the 2d District:

The tract solicited by the resident, Don Gil Ibarra, to my knowledge, belonged to the mission of San Gabriel, and I have likewise seen that it is unoccupied. As to whether he possesses the requisites provided by the regulations, I know that he does possess them. Wherefore your Honor will dispose what you may deem proper.

IG'O M'A ALVARADO.

Angeles, Jan. 8th, 1841.

Let this minute be forwarded to the Rev. Father, Minister of the Mission of San Gabriel, that he may state whatever behooves the rights of that community, and let return be made for the subsequent purposes.

ARGUELLO. NARCISO BOTELLO,
Secr'y.

[L. S.] Stamp clause as above.

SAN GABRIEL, Jan. 13, 1841.

There is no objection on the part of this Establishment to the petitioner, Gil Ibarra, obtaining concession of the tract called Cañada de la Brea, provided that he corrects his design, limiting it to the extent that is unoccupied in the tract he claims, for the design he annexed is merely imaginary.

FR. THOMAS ESTANEGA.
JUAN PERES.

ANGELES, January 14, 1841.

Let the present minutes be returned to the party in interest that he may correct the design, limiting himself merely to the unoccupied part of the tract he solicits, in compliance with the request of the Rev. Father Minister and Mayordomo of the mission of San Gabriel; after which, let return be made to their Prefecture the other subsequent ends.

ARGUELLO. NARCISO BOTELLO,
Secretary.

Most Excellent Sir:

The Prefecture of this 2d District, having taken cognizance of the present minutes, and the design being now corrected agreeably to the request of the Rev. Father Minister and Mayordomo of the mission of San Gabriel, in presence of two individuals placed for that purpose on the part of said establishment, believes that there is no obstacle to the petitioner obtaining the grant of the tract he solicits, since, besides being a resident of good character with a large family, he has stock enough to cover it, and the other requisites provided by the law to entitle his request to be entertained, with the understanding that he states the truth in regard to the losses he suffers in his stock on account of not having premises of his own wherein to keep the same; wherefore your Excellency will take such disposition as may meet your superior pleasure.

S. ARGUELLO. NARCISO BOTELLO,
Secretary.

Angeles, Feb. 1st, 1841.

MONTEREY, 23d, 1848.

In view of the petition, wherewith these proceedings originate, the report of the 2d judge of city of Los Angeles, that of the Rev.

Father Minister of San Gabriel, together with the mayordomo of the same establishment, and that of the Hon. Prefect of the 2d District, with everything beside, that was brought forward and it was proper to keep in view in conformity with the laws and regulations affecting the matter, I do declare Don Gil Ibarra absolute owner of the tract known by the name of Cañada y Lomas de la Brea, bounded east by the boundary or hills of D'n Bernardo Yorba; west by the Arroyo of San José; north by the road to Chino, and south by the boundaries of Mr. Ontiveras, containing one and a half square leagues (sitio de ganado mayor) a little more or less. Let the appropriate patent be made out, entered of record in the proper book, and let these minutes be forwarded to the most Excellent the Departmental Assembly. I, Juan B. Alvarado, Constitutional Governor of the Californias, have so ordered, decreed, and subscribed, which I certify.

The Grant.

Filed in office Aug. 8, 1853.

GEO. FISHER,
Sec'y.

(*Opinion of Board by Com. Campbell.*)

GIL IBARRA vs. THE UNITED STATES. } Cañada de la Brea—one square league. Los Angeles County.

The claim in this case is founded on a grant made to the petitioner by Governor Alvarado, bearing date the 23d of February, A. D. 1841. The signatures of Alvarado and Jimeno attached to said grant, are proved to be in their handwriting. The claimant has filed as evidence in this case a record of juridical possession, properly proved and authenticated, which shows that the premises in question were, on the 26th of March, A. D. 1841, judicially measured and the proper bounds placed. It is proved by the deposition of Ignacio Coronel that the petitioner was in the occupation of said premises previous to the date of his grant; that he had a house on the land and was living in it at the time the grant was made and at the time judicial possession was given, and that he continued to live upon and occupy said place up to the time of taking his deposition. The deponent further states, that the petitioner has a numerous family, who occupy said place like the occupancy of a town. There is no proof of any approval by the Departmental Assembly. On the hearing of this case it was objected by the law agent, that the proof showeth, that the house was built before the grant was made, which he insisted was not a compliance with that condition of his grant which required a house to be built within one year from the issuing of the grant. I look upon this objection as being merely technical; the object of the law was to secure the actual residence of the grantee on the land, and for the purpose of giving to such

residence a permanency, a house was required to be built, and the party was required to live in it. If the grantee had gone upon the land before he had obtained his grant and built a house, and lived in it after he had received his grant, continued to live in it and thus occupy the land, in my judgment this should be considered a full and ample compliance with that condition of his grant which required a house to be built within a year from the date of the grant. The policy which the government had in view is not to be overlooked in the construction of those acts by which that policy was carried into practical effect.

The testimony in this case is of the most satisfactory character in regard to the actual inhabitancy of the land by the grantee within the prescribed time.

It commenced with the grant and has continued ever since. The party sought the land for grazing purposes; actual inhabitancy was therefore indispensable, and without it the condition which the law annexes to every such purpose would have been unperformed. The grant was for one square league, to be located within certain exterior boundaries, marked out on a map furnished by the petitioner, with a reservation of a surplus to the nation. The juridical measurement, which the party has shown, was made at his solicitation, has designated with sufficient certainty the boundaries of the tract claimed, so that there will be no difficulty in the officer locating the precise league of land granted. The party is therefore entitled to a confirmation of his claim.

Filed in office Dec'b'r 20th, 1853.

GEO. FISHER,
Sec'y.

GIL IBARRA
vs.
THE UNITED STATES.

On hearing the proofs and allegations adduced in this case, it is adjudged by the Commission that the said claim of the petitioner is valid, and it is therefore decreed that the same be confirmed. The lands of which confirmation are hereby made, are known by the name of "Cañada de la Brea," and are the same now occupied by Gil Ibarra and other members of his family, and bounded and described as follows, to wit: Beginning at the north point in the radius where the hills become smooth, contiguous to the boundary of Jose de la Luz Linares, and running in a southerly direction though in an oblique line seven thousand varas to a hill near the boundary of Bernardo Yorba, where there is a corner mark; thence running in a westerly direction four thousand varas to a hill, which is the corner of the boundary of Pacifico Ontiveras, where is a mark; thence running in a northerly direction towards the radius of the other hills seven thousand varas; thence running

from west to east one thousand varas to the place of beginning, at the boundary of the said José de la Luz Linares, containing in all one square league. Reference for further description to be had to a map which is made part of document marked Exhibit No. 1, and filed in this case, and also to document marked Exhibit "B" and filed in the cause.

ALPHEUS FELCH.
THOMPSON CAMPBELL.
R. AUG. THOMPSON.

Filed in office Dec. 20th, 1853.

GEO. FISHER, *Sec'y.*

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing thirty-eight pages, numbered from 1 to 38, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said Board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 329, on the docket of the said Board, wherein Gil Ibarra is the claimant against the United States, for the place known by the name of "Rincon de la Brea."

In testimony whereof, I have hereunto set my hand and affix my private seal (not having a seal of office), at San Francisco, California, this twelfth day of September, A. D. 1854, and of the Independence of the United States of America the seventy-ninth.

GEO. FISHER,
Sec'y.

UNITED STATES DISTRICT COURT,
Southern District of California:

CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing 39 pages, numbered from 1 to 39 both inclusive, contain a full, true, and correct copy of transcript No. 329 filed in this office, wherein Gil Ybarra is appellee and the United States are appellants for "Rincon de la Brea."

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Los Angeles, California, this sixth day of December, A. D. 1855, and of the Independence of the United States of America the eightieth.

[SEAL.]

C. E. CARR,
Cl'k.

DISTRICT COURT OF THE UNITED STATES,
Southern District of California:

CLERK'S OFFICE, LOS ANGELES.

GIL YBARRA
vs.
THE UNITED STATES. } Docket Number 85.
Transcript No. 329.

Be it remembered that in the above entitled cause, on appeal to the District Court of the United States for the Southern District of California in the United States of America, from the decision of the United States Land Commissioners to ascertain and settle Private Land Claims in California—

The following proceedings were had, to wit:—

Transcript from the Board of Commissioners in said case No. 329 on the docket of said Board, filed and marked No. 85 on the docket of this Court.

(*Vide* page 1.)

Notice of intention to prosecute appeal by the Attorney-General, filed Jan'y 10, 1855.

(*Vide* page 3.)

Upon which said notice the following subsequent proceedings were had in their chronological order, to wit:—

Petition for review by U. S. Dist. Att'y, filed Aug't 13th, 1855.

(*Vide* page 3.)

Answer to petition for review, filed Oct. 10th, 1855.

(*Vide* page 8.)

Decree of Court affirming the claim.

(*Vide* page 9.)

Order of Court granting appeal to the Supreme Court of the United States.

(*Vide* page 10.)

OFFICE OF THE ATTORNEY-GENERAL OF THE UNITED STATES, WASHINGTON, 30th November, 1854.

GIL YBARRA
vs.
THE UNITED STATES. } 329.

You will please take notice that in the above case decided by the Commissioners to ascertain and settle Private Land Claims in the

State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 30th day of August, 1854, the appeal in the District Court of the United States for the Southern District of California, will be prosecuted by the United States.

(Signed) C. CUSHING,
Attorney-General.

Filed Jan'y 10th, 1855.

(Signed) C. E. CARR,
Cl'k.

IN THE DISTRICT COURT OF THE UNITED STATES
for the Southern District of California:

LOS ANGELES COUNTY, STATE OF CALIFORNIA.

GIL YBARRA
ads.
THE UNITED STATES. } No. 85 (Transcript No. 329).

To the Honorable Isaac S. K. Ogier, Judge of the District Court of the United States for the Southern District of California.

The petition of Pacificus Ord (of Los Angeles county), Attorney of the United States for the Southern District of California, who petitions in this behalf for the United States, represents as follows:—

That heretofore, to wit, on or about the 9th day of September, A. D. 1852, Gil Ybarra presented a petition to the Commissioners to ascertain and settle the Private Land Claims in the State of California, claiming the tract of land called "Cañada de la Brea," in the county of Los Angeles, in the words and figures following, viz:—

"The petition of Gil Ybarra respectfully represents to your Hon'l Board that he is the claimant of a tract of land in Los Angeles county, known as 'Cañada de la Brea,' bounded on the east by the valley that lies immediately next to the hills belonging to Mr. Bernardo Yorba, at the west by the brook of San José, at the north by the highway to Chino, and on the south by the boundaries of Mr. Onteveras, containing one square league, a little more or less: that the same was granted to your petitioner by Governor Juan B. Alvarado on the 23d day of February, 1841, by virtue of the colonization laws of Aug't 24th, and the instructions and regulations of Nov'r 21st, 1828, and the various laws of Mexico, and the customs of the country affecting grants of land in California. Your petitioner received juridicial possession of said land on or about the 24th day of March, 1841, from the proper officer of the then existing district. There is no conflicting claim to said land known to your petitioner. Your petitioner herewith files copies of the Expediente, juridicial possession, and other papers relating to this case, as well as translations of the same; all of which are respectively marked and num-

bered as exhibits, the originals of said papers being in the possession of your petitioner ready to be produced and proved.

"The evidence upon which your petitioner relies in this case are the records of this grant in the office of the U. S. Surveyor-General, original papers (copies of which are herewith filed), and to which your petitioner prays leave to refer as part of this petition, and the testimony of witnesses to be produced before your Hon'l Board.

"Respectfully submitted for such action as the justice and nature of the claim may require."

Your petitioner further represents that thereafter, to wit, on the 20th day of December, A. D. 1853, the said Commissioners confirmed, by final decree, the said claim of the said Gil Ybarra in the words and figures following, to wit:—

"On hearing the proofs and allegations adduced in this case it is adjudged by the Commission that the said claim of the petitioner is valid, and it is therefore decreed that the same be confirmed. The lands, of which confirmation are hereby made, are known by the name of 'Cañada de la Brea,' and are the same now occupied by Gil Ybarra and other members of his family, and bounded and described as follows, to wit: Beginning at the north point in the radius where the hills become smooth, contiguous to the boundary of Jose de la Luz Lenares, and running in a southerly direction through in an oblique line seven thousand varas, to a hill near the boundary of Bernardo Yorba, where there is a corner mark; thence running in a westerly direction four thousand varas, to a hill, which is the corner of the boundary of Pacifico Ontiveras, where is a mark; thence running in a northerly direction towards the radius of the other hills seven thousand varas; thence running from west to east one thousand varas to the place of beginning at the boundary of the said Jose de la Luz Linares, containing in all one square league, reference for further description to be had to a map which is made part of document marked Exhibit *I*, and filed in this case, and also to document marked Exhibit *B*, and filed in the cause.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON.

That therefore, to wit, on the 20th day of September, A. D. 1854, a duly certified transcript of the said decree and proceedings, and the papers and evidence on which it was founded in said cause, was filed in the office of the Clerk of the District Court of the United States for the Southern District of California, and marked No. 85 (Transcript No. 329), reference to which it is prayed may be had and made a part of this petition.

That on the 30th day of August, A. D. 1854, the Honorable Caleb Cushing, Attorney-General of the United States, received a duly certified duplicate of said transcript of said final decision and

proceedings of said Commissioners in said cause (No. 329), and the papers and evidence on which said decree was founded. And that thereafter, to wit, on the 10th day of January, A. D. 1855, the said Attorney-General of the United States filed or caused to be filed, on behalf of the United States, a notice with the said Clerk of said District Court for the Southern District of California, that the appeal in said cause of Gil Ybarra *vs.* The United States, from the decision of the said Commissioners to ascertain and settle the Private Land Claims in the State of California in the District Court of the United States for the Southern District of California, would be prosecuted by the United States.

Your petitioner further represents that the said land claimed as aforesaid, is within the jurisdiction of this Honorable Court.

And your petitioner further represents and insists that the said decree of said Commissioners is erroneous, and ought to be reviewed, reversed, and set aside, for many errors and imperfections of law and evidence apparent in said certified transcript of said cause, now on appeal from said Commissioners to this Honorable Court.

And your petitioner further represents that the said claim is invalid, and the said decree erroneous on the following grounds:

I. And the said attorney denies all and singular each and every allegation in the petition of said claimant to said Commissioners of said date. And he further denies that any grant for said land was ever made, as alleged in said petition. And he denies, further, that the said claimant has shown any or sufficient evidence of the validity of the said claim.

II. That the said alleged grant of Juan B. Alvarado was made in violation of the 4th Article of the Colonization Law of Mexico, of the 18th of August, A. D. 1824, in this, that the land granted as alleged by claimant, was and is within ten leagues of the sea-coast, and there is no evidence shown by claimant that the Supreme General Executive power of Mexico previously approved of the colonization of the public land in Upper California, lying within ten leagues of the sea-coast. And it is denied that such previous consent of said Supreme General Executive power of Mexico in such case was ever had.

III. That at the date of the said alleged grant the land claimed as aforesaid, was occupied by, and in the possession of the Missions of the Territory of Upper California; and it was held and occupied particularly by the Mission of San Gabriel, and could not therefore be colonized.

IV. That the said alleged grant has not the conditions required by, and is not made in entire conformity with the laws of Mexico of the 18th day of August, A. D. 1824, and the regulations for the colonization of the Territories of Mexico of the 21st of November, A. D. 1828.

V. That the description of the locality, extent, and boundaries

of the land in the said alleged grant of the date of the 23d February, 1841, and the map referred to therein, is vague and indefinite; and the said alleged grant is void for uncertainty.

VI. That there is no evidence that the said alleged grant of said date was ever approved by the Departmental Junta of California, or the Supreme Government of Mexico, and it is denied that it was ever approved by said Departmental Junta, or said Supreme Government.

VII. That said claimant shows no definitive grant or title for said tract of land.

VIII. That the said alleged juridical possession given on or about the 24th or 26th of March, 1841, was unlawful, for the reason that the said alleged grant had not then been approved by the said Departmental Junta of California, as required by the conditions of the said alleged grant, nor had it been approved by the said supreme government of Mexico.

IX. That the said alleged juridical possession of said date was not made according to the said alleged grant, and the map referred to therein; nor according to the ordinance or law, and it is vague, indefinite, and void.

X. That there is no sufficient evidence that the said claimant performed the conditions of the said alleged grant, and that he built a house upon the said tract of land, and that it was inhabited within one year from the date of the said alleged grant, and that he cultivated the said tract of land; and it is denied that he performed the conditions of the said alleged grant; and that he built a house upon the said tract of land; and that it was inhabited within one year from the date of the said alleged grant, and that he cultivated the said land.

And no sufficient proof having been made by said claimant of the allegations of his said petition, or in support of his said claim filed as aforesaid, no decree ought to have been made or grounded thereon; but the said petition ought to have been dismissed, and said claim rejected by said commissioners, upon the grounds aforesaid. And the said claimant having no valid right or title, derived from the Spanish or Mexican government, to the said land claimed by him, as aforesaid, the lawful right or title in and to the said land was acquired by, and it now belongs to the said United States by virtue of the treaty of peace, friendship, limits and settlement with the Republic of Mexico, dated at the city of Guadalupe Hidalgo, February 2d, 1848.

Wherefore the said Pacificus Ord, attorney of the United States for the Southern District of California, for and in behalf of the United States, by reason of the premises, and in pursuance of the act of Congress entitled "An act to ascertain and settle the private land claims in the State of California, approved March 3d, A. D. 1851, and the laws and statutes in such case made and provided, prays that the said Gil Ybarra may be served with a copy of this petition,

and that the Honorable Court will review the said decision or final decree of confirmation of said Commissioners to ascertain and settle the private land claims in the State of California, and decide on the validity of the said claim of the said Gil Ybarra for said land claimed and confirmed as aforesaid, and that the same may be decreed invalid, and all such other orders, judgments or decrees as may be just, with costs and general relief.

(Signed) P. ORD,
Attorney of the United States for the Southern District of California.

Filed August 13th, 1855.

(Signed) C. E. CARR,
Cl'k.

U. STATES DISTRICT COURT
for the Southern District of California:

GIL YBARRA
ads.
THE UNITED STATES. } No. 85. (Transcript No. 329.)

The respondent for answer to the petition filed in this cause, answers and says: It is true that the land mentioned in said petition, and in transcript of the proceedings before the said Board of Commissioners, lies within said Southern District of California, and within the jurisdiction of this Court.

But this respondent denies that his title to the said lands is invalid, and avers that his title is valid, and prays that the decision of the said Board be affirmed, and his title be decreed to be valid.

(Signed) E. O. CROSBY,
of Counsel for Appellee.

Filed Oct. 10th, 1855.

(Signed) C. E. CARR,
Cl'k.

THE UNITED STATES, Appellants,
vs.
GIL YBARRA, Appellee. } No. 85. "Rincon de la Brea."

DISTRICT COURT OF THE UNITED STATES,
Southern District of California:

This cause coming on to be heard at a special term of this Court, on an appeal from the final decision of the Commissioners to ascertain and settle Private Land Claims in the State of California, under the act of Congress approved March 3d, 1851, upon the transcript of the decision and proceedings, and the papers and evidence on which said decision was founded, and it appearing that said tran-

script has been duly filed according to law, and counsel for the respective parties having been heard, It is ordered, adjudged and decreed, that the decision of the said Commissioners be affirmed, and that the claim of the said Gil Ybarra to the land described in the grant in this case is a good and valid claim, and the same is hereby confirmed to the extent of one square league; Provided, that the quantity of one square league be contained within the limits called for in said grant and map to which it refers; but if there be less than said named quantity, then the claim of said appellee to said less quantity is hereby confirmed.

(Signed) ISAAC S. K. OGIER,
U. S. Dist. Judge for the Southern District af California.

In the U. States District Court
for the Southern District of California:

Special Term, Sept. 1855. Los Angeles.

Gil Ybarra, App'ee, ads. The United States, App't. } No. 85. (Transcript No. 329.)

On motion of P. Ord, Attorney of the United States for the Southern District of California, it is ordered by the Court that an appeal be granted the United States to the Supreme Court of the United States, from the judgment of this Court against the United States in the above entitled cause, rendered on or about the 11th day of October, A. D. 1855.

(Signed) P. ORD,
U. S. Dist. Att'y.

Filed Jan'y 10th, 1855.

(Signed) C. E. CARR,
Clerk.

United States District Court,
Southern District of California:

Clerk's Office, Los Angeles.

I, Charles E. Carr, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing 10 pages, numbered from 1 to 10, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the Decision of the said Court, of the documentary evidence, and of testimony of witnesses upon which the same is founded, on file in this office in case No. 85, on the docket of the said Court,

wherein Gil Ybarra is appellee and the United States is appellant, for "Rincon de la Brea."

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Los Angeles, California, this sixth day of December, A. D. 1855, and of the Independence of the United States of America the eightieth.

[SEAL.] C. E. CARR,
Clk.

SUPREME COURT OF THE UNITED STATES.

No. 200.

THE UNITED STATES, APPELLANTS,

vs.

BERNARDO YORBA.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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GIDEON, Print.

Transcript of the proceedings in case No. 387, *Bernardo Yorba, claimant,* vs. *The United States, defendant, for the place named Cañon de Santa Anita.*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this ninth day of October, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Bernardo Yorba, for the place named "Cañon de Santa Anita," was presented, and ordered to be filed and docketed with No. 389, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition, the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *October 15th*, 1852.

In case No. 387, Bernardo Yorba, for the place named "Cañon de Santa Anita," the deposition of Ignacio F. Coronel, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with document marked H. H. A., and the translation thereof, marked *a*, annexed thereto, was filed.

(Vide page 3 of this Transcript.)

LOS ANGELES, *October* 19, 1852.

In the same case, the deposition of Abel Stearns, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *September* 26, 1853.

Case No. 387 called, submitted on briefs, and taken under advisement.

SAN FRANCISCO, *Jan.* 24, 1854.

In the same case, Commissioner R. Aug. Thompson delivered the opinion of the board confirming the claim.

(Vide page 31 of this Transcript.)

Petition

To the honorable Commissioners for ascertaining and settling private land claims in California:

Bernardo Yorba respectfully represents, that on the 30th of July, 1834, a concession of land was made to him by José Figueroa, then governor of California, acting under authority of the laws then in force,

which concession was, in due form, approved by the Territorial Deputation on the 31st of July, 1834, and a formal grant of the land as title was issued to him on the 1st of August, 1834. That the land thus granted is called the "Cañon de Sta. Ana," with boundaries defined in the title, containing three leagues more or less, and is situated in the present county of Los Angeles. That judicial possession of the land was given to him on the 11th of December, 1834. That he has lived upon the land since the date of the grant, or a short time thereafter; he knows of no other claim to any part of the land.

He herewith files the original grant and act of judicial possession, marked "Exhibit A," with a translation thereof, marked "*a*," and relies in support of his claim upon said documents, and such other evidence as he may hereafter present, and prays the confirmation of his title.

A. P. CRITTENDEN,
Atto. for Claimant.

Filed in office October 9th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of I. F. Coronel.

OFFICE U. S. LAND COMMISSION,
LOS ANGELES, *Oct. 15th*, 1852.

On this 15th day of October, 1852, before me, Hiland Hall, one of the commissioners for ascertaining and settling private land claims in California, personally appeared Ignacio Coronel, a witness produced on the part of Bernardo Yorba, claimant of "El Cañon de Santa Ana," which claim is No. 387 on the docket of said commissioners, who, being duly sworn, testified as follows—the associate law agent of the United States having been notified and attending:

Question first. What is your name and age? Where do you reside? If in California, how long have you resided here?

Answer. My name is Ignacio F. Coronel. I am fifty-eight years of age. I live in Los Angeles, and have resided in California about nineteen years.

Question second. Are you acquainted with the signature of José Figueroa, Agustin V. Zamorano, José Matias Moreno, and José Perez?

Answer. I am.

Question third. Examine the document on file in this case, marked exhibit "A," and say whether or not the signatures of said persons are genuine.

Answer. I have examined said document; the signatures of José Figueroa and Agustin V. Zamorano to the title of Zamorano to the certificate accompanying it, of José Matias Moreno to the certificate endorsed on the diseño, and of José Perez, whenever it appears in the act of judicial possession, are all genuine.

Question fourth. Who was governor of California on the 1st of August, 1834, and who was secretary?

Answer. Don José Figueroa was governor, and Agustin V. Zamorano secretary.

Question fifth. Who was secretary in May, 1846?

Answer. José Matias Moreno was acting as secretary at Los Angeles in the absence of José Ma. Covarrubias, the regular incumbent.

Question sixth. Who was the first alcalde of the jurisdiction of Los Angeles during the month of December, 1834.

Answer. Dn. José Perez was first alcalde, and judge *and judge* of the first instance.

IGO. F. CORONEL.

Sworn and subscribed before

HILAND HALL, *Com'r.*

Filed in office, Oct. 15, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Abel Stearns.

OFFICE OF THE U. S. LAND COMMISSION, LOS ANGELES.

On the 19th day of October, 1852, before me, Hiland Hall, one of the commissioners for ascertaining and settling private land claims in California, personally appeared Abel Stearns, a witness produced on behalf of Bernardo Yorba, claimant of "El Cañon de Sta. Ana," in the case which is No. 387 on the docket of said commissioners, who, having been duly sworn, testified as follows—the associate law agent of the United States being present:

Question first. What is your name, and age? Where do you reside? If in California, how long have you resided here?

Answer. My name is Abel Stearns; my age is fifty-four years, and I reside in Los Angeles, where I have resided for many years, having lived in California ever since the year 1829.

In answer to further questions by the counsel for the claimant, the witness testified as follows: I am acquainted with the rancho Cañon de Sta. Ana. It is situated on the northwest side of the River Sta. Ana, and is bounded by the river. I was employed as surveyor at the giving of juridical possession of the land to Bernardo Yorba, and my signature is attached to the record of such possession, which is now shown me. The alcalde who gave the possession was José Perez, in the year 1834. The paper showing such proceedings is a genuine paper, and the proceedings took place as therein stated; said paper is document A, annexed to the deposition of I. F. Coronel in this case. At the time of the giving of judicial possession Yorba had a house on the land, in which he lived with his family; he had a stock of cattle and horses; he has resided there ever since. He has always been one of the most extensive cultivators of land in this section

of the country. He has two vineyards, and at this time has not less than eight thousand head of cattle, with numbers of horses and sheep.

ABEL STEARNS.

Sworn and subscribed before me,

HILAND HALL, *Com'r.*

Filed in office, Oct. 19th, 1852.

GEO. FISHER, *Sec'y.*

[*For map see original, page* 7.]

Espediente perteneciente a D. Bernardo Yorba del rancho de San Antonio del Cajon.

Año 1834.

Sello Primero, Seis Pesos.

Habilitado provicionalmente por la administracion de la Aduana Maritima de Monterey, para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

FIGUEROA,
RAFAEL GONZALEZ.

José Figueroa, General de Brigada del Ejercito de la republica
[SEAL.] Mejicana, Commandante General, Ynspector y Gefe Superior Politico del Territorio de la Alta California.

Por cuanto el ciudadano Bernardo Yorba, Mejicana por nacimiento, ha pretendido para su beneficio personal y el de su familia el terreno conocido, con el nombre del Cañon de Santa Ana, colindante con la mision de San Gabriel y rancho de Santa Ana y Santa Gertrudes; practicados previamento las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos; usando de las facultades que me son conferidas y de conformidas con el acuerdo de la excelentisima diputacion territorial, del dia treinta y uno de Julio, aprovando la concesion del citado terreno del Cañon de Santa Ana, hicho en decreto de treinta del mismo mes al referido Ciudadano Bernardo Yorba: á nombre de la nacion Mejicano, he venido en conferir le el terreno mencionado, declarando le la propriedad de el por las presentes letras, y sujeto á las condiciones siguientes:

1a. Que se sometera á las ql. estableciere el reglamento, que se ha de formar para la distribucion de terrenos valdios, y que entre tanto ni el egraciado ni sus herederos podran dividir ni enagenar el que se les

adjudica: imponer senso, vinculo, fianza hipoteca ni otro gravamen aunque sea por causa piadosa, ni pasarle a manos muertas.

2a. Podra cercarlo, sin perjudicar las traversias caminos y servidumbres, lo disfrutará libre y exclusivamente, destinandole al uso ó cultivo ql. que mas le acomode, pero dentro de un año fabricara casa y estará habitada.

3a. Solicitara del juez respectivo ql. le de posecion juridica, en vertud de este despacho, por el cual se demarcaran los linderos en cuyos limites pondra a mas de las mojoneras algunos, arboles, frutales, ó silvestres de alguna utilidad.

4a. El terreno de ql. se hace mencion es de tres sitios de ganado mayor, poco mas o menos segun esplica el diceño, ql. corre en el espediente el juez ql. diere la posecion lo hará medir conforme a ordenanza, para señalar los linderos quedando el sobrante que resulte á la nacion para los usos convenientes.

5a. Si contraviniere á estas condiciones perderó su derecho al terreno y sera denunciable por otro.

En consecuencia mando ql. teniendose por firme y valedero este titulo se tome razon, de el en el libro á que corresponde y se entreque al interesado para su resguardo y demas fines. Dado en Monterey, á primero de Agosto, de mil ochocientos treinta y cuatro.

JOSE FIGUEROA.
AUGUSTIN V. ZAMORANO, *S'rio.*

Queda tomada razon de este titulo sobre adjudicacion de terrenos á fojas cuarenta y cinco numero cuarenta y tres, que obra en la secretario de mi cargo. En Monterey, á tres de Agosto, de mil ochocientos treinta y cuatro. ZAMORANO.

En el pueblo de ntra. S'ra de los Angeles de la Alta California, á diez de Dbre., de mil ochocientos treinta y cuatro, ante mi, José Perez, alcalde cons'l de esta jurisdicion, por cuanto D. Bernardo Yorba ha manifestado la necesidad que tiene de q. se le de la juridica posecion del terreno, que se le ha adjudicado, anuente con la prevencion tercera del despacho q. q. obtiene de la prefectura de este territorio, prosedi en union de los testigos de asistencia. El juez que subscribe, asi lo mando, decreto y firmo, de que doy fee.

En el rancho llamado Cañon de San Ana, jurisdicion del pueblo de los Angeles, á once de D'bre, de mil ochocientos treinta y cuatro, á fin de prosedir a la medicion de dho. terreno pa. dar la juridica posecion de los tres citios que corresponden al interesado, nombré por oficial agrimensor á D. Abel Stearnes, y por cordeleres á los cind'as Julian Manriques y Pedro Peres, á los cuales recibi juramento que otorgado ante mi, y los testigos de asistencia, por el que hisieron desempeñar fiel y legalm'te el encargo que se les pabia conferido y al efecto firmó, conmigo el agrimensor ante los testigos de mi acistencia, menos los cordeleros que no saben. JOSE PEREZ.

De ass'a: MANUEL ARREGA,
VICENTE MORAGA.

En el rancho mencionado dia, mes y año, en prosecucion de las presentes diligencias; hise alistar una cuerda acida en sus estremos y unos palos y habiendonos cituados á orillas del rio, se tiró la cuerda rumbo al oeste 16 grados al sur y se midieron y contaron quince mil varas en donde mandé pones la correspondiente mohonera. Seguidam'te se signe la medida rumbo al norte 5 grados de oeste, y se contaron y midieron cinco mil quinientos varas. En seguida se tiró la medida rumbo al este 16 grados al norte y midieron y contaron catorce mil varas, de este punto se siguié la medida rumbo al sur 40 grados de esta hasta el rio, contando cinco mil docientos varas; dejando algo el sobrante por el punto del este y poniendo donde correspondio, las respectivas mohoneras; concluyose este acto lo firmaron por ante mi actuando en papel comun por no haber del que corresponda.

JOSE PEREZ,
ABEL STEARNES.

De ass'a: MAN'L ARRAGA,
VICENTE MORRAGA.

Filed in office, Oct. 15th, 1852.

GEO. FISHER, *Sec'y.*

Translation of original title and act of possession.

Sello Primero, Seis Pesos.

Furnished provisionally by the administration of the custom-house of Monterey, for the years 1834 and 1835.

FIGUEROA,
RAFAEL GONZALES.

[Governo politico de la Alta California.]

José Figueroa, brigadier general of the army of the Mexican republic, general commanding, inspector and superior political chief of the Territory of Upper California: Whereas, the citizen Bernardo Yorba, a Mexican by birth, has asked, for his personal benefit and that of his family, the land known by the name of the "Cañon de Santa Ana," bounded by the Mission of San Gabriel and the Ranchos of Santa Anna and Santa Gertrudes;—the proceedings having been taken and inquiries made, as required by the laws and regulations, in the exercise of the powers which are conferred upon me, and in conformity to the decree of the Territorial deputation of July 31st, approving of the concession of the said land of the "Cañon de Santa Ana," made the 30th of the same month to the said citizen, Bernardo Yorba; in the name of the Mexican nation I have granted him the said land, declaring it his property by these presents, subject to the following conditions:

1st. That he shall submit himself to those which may be established by the regulation to be adopted for the distribution of vacant lands, and that, in the meanwhile, neither the grantee nor his heirs shall have power to divide nor alienate what is adjudicated to him, nor impose on it any tax, entail, reversion, mortgage, nor other charge, though for pious cause, nor convey it in mortmain.

2d. He may enclose it without injuring the crossings, roads or servitudes. He shall enjoy it freely and exclusively, applying it to the use or cultivation that best suits him, but within one year at the most he shall build a house, and it shall be inhabited.

3d. He shall solicit the proper judge to give him the judicial possession in virtue of this decree, by whom the boundaries shall be marked out, on which he shall put, in addition to the monuments, some fruit trees or forest trees of some utility.

4th. The land herein mentioned is three leagues de ganado mayor, a little more or less, as explained in the map (diseño) attached to the espediente. The judge who may give the possession shall have it measured, in conformity to the ordinance to mark its boundaries, leaving the surplus which remains to the nation for the appropriate uses.

5th. If he should violate these conditions he shall lose his right to the land, and it may be denounced by another. Wherefore, I order that this title, being held firm and valid, be recorded in the book to which it belongs, and be delivered to the party for his security and other objects. Given at Monterey the 1st of August, 1834.

JOSÉ FIGUEROA,
AGUSTIN V. ZAMORANO.

In the pueblo of Our Lady of the Angels, of Upper California, this 10th day of Dec., 1834, before me, José Perez, constitutional alcalde of this jurisdiction.

Whereas, D. Bernardo Yorba has shown the necessity of his having judicial possession of the land adjudicated to him according to the 3d condition of the decree, issued to him by the gov't of this Territory, let assisting witnesses go with me to the said place called the "Cañon de Santa Ana." I, the subscribing judge, so order and sign, to which I certify. JOSÉ PEREZ.

Assg.: Man'l Arraga,
Assg.: Vic't Moraga.

On the rancho called the "Cañon de Sta. Ana," in the jurisdiction of the pueblo of Los Angeles, on the 11th of Dec'r, 1834, for the purpose of proceeding to the measurement of said land, in order to give to the party judicial possession of the three leagues which belong to him, I named as official surveyor Don Abel Stearns, and for chain-bearers the citizens Julian Manriquez and Pedro Perez, to whom I administered an oath, which was taken before me and the assisting witnesses, that they would faithfully and legally discharge their duties. Signed with me by the surveyor, before the assisting witnesses, the chain-bearers not knowing how to write.

ABEL STEARNS,
JOSÉ PEREZ.

Assg.: Man'l Arraga,
Assg.: Victor Moraga.

At the said rancho, on the same day, month and year, to prosecute the proceedings, I caused a cord to be prepared, having stakes of wood at its extremities, and we being on the banks of the river, the line was run west 16° south 15,000 varas, where I ordered a land-mark to be placed; thence N. 9° W. 5,500 varas; thence east 16° north 14,000 varas; thence south 40° east 5,200 varas to the river, leaving some surplus on the east, and placing the proper monuments where they belonged. This act being concluded, was signed before me on common paper, there being none sealed.

JOSE PEREZ,
ABEL STEARNS.

Assg.: Man'l Arraga,
Assg.: Vincente Morraga.

Filed in office, October 9th, 1852.

GEO. FISHER, *Sec'y.*

Jurisdicion del Pueblo de los Angeles.—No. 43.—Año de 1834.

Espediente.

Sobre el paraje nombrado el Cañon de Santa Aña solicitado por D. Bernardo Yorba.

Pueblo de los Angeles, 26 *de Febro., de* 1834.

De conformidad con la ley de la materia, informe el Il'tre Ayuntam'to del pueblo de los Angeles, si el interesado en esta instancia obtiene los requisitos prevenidos para ser atendido, si el terreno q'l pretende esta comprendido en las veinte leguas limitrofes, o dies litorales q'l espresa la ley de 18 de Agosto, de 1824, si es de regadio temporal o abrevadero, si pertenece a propiedad particular o corporacion pueblo, con todo lo demas, que sea comben'te para ilustrar lo materia. Evacuado esto pasará el espediente al padre minist'ro de la Mision de San Gabriel, para q. informe lo que le ocurro. El S'or Don José Figueroa, g'ral de brigada, comand'te gefe sup'r politico del territorio de la Alta California, ási lo mando, decreto y firmo, de que doy fee.

JOSE FIGUEROA.

S'or Gefe Superior Politico:

Bernardo Yorba, vicino y radicade en el rancho de Santa Ana, perteneciente á la jurisdicion del pueblo de los Angeles, a V. S. con el mejor forma y a mi derecho convenga; me precente y digo, que habiendo sido casado de primeras mugeras, de cuyo matrimonio tubo tres hijos llamados Raymondo, Tues y Romero, al ponernie es el estado segun vez por muerte por mi citados tres hijos, con algunos bienes de campo con q'l de mi legitima propriedad y ase y actualm'te poses y siendo esta una cantidad, que de el por si demanda se lepo el corto terreno que ocupaneos cuatro hyjas me ves en la posecion y la necesitad de solicitar de la consideracion de V. S. ql. se sirva concederme a

beneficio de mis tres referidos hijos el terreno que ocupa; el sitio conocido con el nombre del Cañon de Sta. Ana, colindante con el rancho de este nombre el de Santa Gertrudis y la mision de Sta. Gabriel. Si todo el sitio es abrevadero y muy quedabro, conteniendo de siete mil varas de sur al norte, y trece mil dosientos cincuenta de oriente á poniente, con tres pequeños aguajes ni de propiedad alguno ni tampoco es comprendido en las veintas leguas limitrofes o diez litorales q'l espresa la ley para el efecto debidamente acompaño el repetido diseño, que dara á V. S. una esacta ideo del espresado terreno y tambien pará proveer todo lo que dejo espuesto. Por tanto á V. S. pido y suplico de digne aceder á esta solicitud previas las correspondientes informes de cuya gracia viviré reconocido, sirviendose recibir este en papel comun p'r pues, no lo huy en esta poblacion del sello correspondiente.

BERNARDO YORBA.

Pueblo de los Angeles, Feb'o 15, de 1834.

Pueblo de los Angeles, 26 *de Febro., de* 1834.

De conformidad con la ley de la materia, informe el Iltre Ayuntam'te del pueblo de los Angeles, si el interesado en esta instancia obtiene los requisitos prevenidos para su atendido, si el terreno q'l pretende esta comprendido en las veinte leguas limitrofes, o dies litorales q'l espresa la ley de 18 de Agosto, de 1824, si es de regadio temporal o abrevadero, si pertenece a propiedad particular o corporacion, pueblo con todo lo demas, que sea comben'te para ilustrar la materia. Evacuado esto pasará el espediente el padre minist'ro de la mision de San Gabriel, para q'l informe lo que le ocurro. El S'or Don José Figueroa, gen'l de brigada, comand'te Gefe sup'r politico del territorio de la Alta California, asi lo mando, decreto y firmo, de que doy fee.

JOSE FIGUEROA.

Pueblo de Los Angeles, *Marzo* 6, *de* 1834.

En virtud de este antecedente decreto del S'or gefe politico del territorio, informe este Iltre Ayuntamiento que el ciud'o Bernardo Yorba es un individuo de conocido orden, que tiene todos los requisitos provenidas para su atendido, en la gracia que solicita, que el terreno q'l pretende no es comprendido en las veinte leguas limitrofes no en diez litorales, q'l espresa la ley de 18 de Agosto, de 1824, que es todo de abrevadero con tres pequeños aguajes no el esisten; q'l se comprende como baldio p'r no hallarse en el ningunos bienes domesticos, y solo si un corto numero de ganado bacuno y caballada de la misma clase, todo de propiedad comun colindante son las ranchos de Santa Ana, Sta. Gertrudis y Mision de San Gabriel, a cuanto tiene q'l informará este ayuntam'to sobre el particular.

JOSE PEREZ.
VICENTE MORRAGO, *S'rio.*

Mision de Sn. Gabriel, 17 *de Marzo, de* 1834.

En virtud del informe q'l dicha mision se lepido respeto del sitio conocido, con el nombre Cañon de Sta. Ana, colindante con el rancho

de Sta. Ana de S'to, de Sta. Gertrudis, y la mision dijo que el terreno q'l solicita Dn. Bernardo Yorba, ha sido y es terreno no valdio sino ocupado por bienes de la mision, cuya propiedad reside en el, desde el tiempo en que las S'ores Yorbas crecian de ganado mayor, hasta la fecha segun el un animo testimonio de todos los neofitos encargados del rancho de Sta. Ana, en virtud que por las continuas corridas de caballada se ha ayentado un poco de ganado por las tomerias y otras puntas; como conota el mismo interesado que puedo afirmar que mando los neofitos de esta mision daban en vodeo los Señores Yorbas se paraban, el suyo quedandose la mision se ha mencionada en pacifica procecion de eguel terreno a mas al Ciud'no Francisco Felis, que encargado por el finado p. Fran. aretes de su fallacimento afin de que se reconociera, dicho punto con el diseño de plantar un nueve rancho en el mismo punto, con el diseño de que dicho individuo de mayordomo en el para atender y cuidar del copioso numero de ganado mayor, que haien en rancho de Sta. Ana, con la unica misma de cuya en parte los propicios tan grandes que redundase en propio de la mision, por los continuas mantanas q'l se habian en aquel punto y sus contones, Murió el R. P. Teo. José Sanchez y se guido la cosa ambos que lo soy de parener; que con dichos terrenos a d'ho abuscan la raison del rancho de Sta. Ana. Es quando tengo que informe sobre el particular.

D. THOMAS ESTENAGA.

Pueblo de los Angeles, *Abril* 7, *de* 1834.

El Ittre Ayuntamiento de este pueblo atento al antecedente informe del R. d. P. Tomas Estenago mto. de la mision de San Gabriel, en que contraria el que dio d'ho corporacion con f'ha 6 de Marzo ulto., ha dice puesto espone en obsequio de su monos, y de la integridad con que ha procedido ace anuente lo siguiente. Que el terreno pretendido por el Ciudo. Bernardo Yorba, se haga bajo el que y circum'l? Que en el espresado informe de 6 de Mayo de la aprobacion, y en testimonio de la verdad pone de emplenar de que en el año de 1824, siendo mtro. de la citada Mision el R. P. F'r. José Sanchez, el mayordomo Francisco Felis, se atrevió seguramente por orden de dicho padre a determinar á la mision que aquel terreno no era de su propriedad indemé los perjuicios que por d'ho atendo resultarán á devulta y el reptdo. mayordomo efectuar de su autoridad fué corregió como previa su hécho. Este incontinente contados pa q'l el podran dar si necesarias fueré, acreditarán seguramente que el R. P. se halla equivoco en el concepto que se ha formado con referencia á este terreno segun lo manifiestan sus informes.

JOSE PEREZ.
VICENTE MORRAGA, *Scrio.*

Monterey, *Mayo* 10, *de* 1834.

Pasé al alcalde del pueblo de los Angeles, ante quien la parte de Bernardo Yorba producirá una informacion de tres testigos idoneos, que sean interrogados sobre los puntos siguientes: 1o, si el solicitante es Ciudo. Mejicano por nacimiento, si es casado y tiene hijos. Si es de buena conducta; 2o, si el terreno q'l pretende pertenece á la propi-

edad de algun particular, mision pueblo á corporacion, si es de regadis temporalo abrevadero y q'l estension tendra; 3o. Si tiene bienes de campo con q'l poblar o possibilidad de adquerirlos. Evacuadas estas diligencias, vuelva el espediente para su resolucion El S'or D. José Figueroa, General de Brigada, Comand'te General y Gefe Superior Politico de la Alta California, asi lo mandó, decreto y firmo, de que doy fee.

JOSE FIGUEROA.
AGUSTIN V. ZAMORANO, *Scrio.*

Pueblo de los Angeles, *Junio* 9, *de* 1834.

Recibido el presente espediente, evacuadas las declaraciones, que esta el decreto de la del mes pasado y concluydos, devuelvará el original á la prefectura, para los fines q'l sean consiguientes José Perez, alcalde cons'l del pueblo de los Angeles, asi lo acordo, mando y firmo, con testigos de acistencia. Segun d'ro.

JOSE PEREZ.

Ass'a: Manuel Arraga,
De ass'a: Vicente Morraga.

En el mismo dia, mes y año, sieudo presente el Ciudo. José Zeferino Reyes de este vecinidad lo recibi juram'to que hizo en toda forma de d'ho por Dios nuestro Señor, y una senal de la Cruz, y de cuyo cargo ofreció decir verdad en lo q. supiere y fuese preguntado y siendolo sobre los particulares a que a contrahe el decreto precedente el cual se le leyo, integro digo: que cuando al Ciudo. Bernardo Yorba que se natural, se hasta de este territorio, cassado en segunda nupcias y tiene seis hijos, y varones y mugeres, q'l se a conducta es incorigible y notoria ser es hombre de bien, que el terreno nombrado como es baldio que pertenece á propiedad ninguna por el paraje es de riego, que ace con el rio q'l daban de S'ta Ana, que la estencion del terreno es de tres o cuatro leguas de largo y una y de medio de ancho pocho mas o menos, q'l tiene bienes suficientes de campo para poblar lo tanto de ganado como de caballada, que lo dicho es la verdad á cargo de juramento q'l tiene hecho en q'l se le afirmo y ratifico, le dio que le fué la declaracion esperando ser mayor de treinto años, casado y natural de este pueblo, y no firmó p'r no saber lo hiro yo y los testigos de acistencia. Segun derecho—Esto Ve. ancho—vale—tachado—largo—no vale.

JOSE PEREZ.

Ass'a: Manuel Arraga,
Ass'a: Vicente Morraga.

En la fecha siendo presento D. Juan Perez á su persona le recibi juram'to ql. higo en señal de forma de d'ho pr. Dios nuestro Senor, y la señal de la Cruz, bajo cuyo cargo ofrecio decir verdad, en lo ql. recibiré y fuere interrogado y siendolo sobre los puntos ql. indica el decreto del S'or Gefé Politico fha lo del pasado, responde que el S'or D. Bernardo Yorba, es un hombre de buena fama y conducta y es en buenas circunstancias dicho sujeto es casado en Sant Ana y donde es natural ql. tiene tres hijas y tres hijas, que el paraje nombrado el Cañon, no

pertenece á ninguna propiedad y sus siembras las hace el referido Yorba, ql. ratifico de riego, que hace del Rio de Sant Ana, este paraje á su juntos, tendra cuatro leguas de largo y una de ancho, ql. tiene bastante ganado y caballada, pues en Sant Ana, nadie tiene mas bienes que el Bernardo Yorba; que digo que lo espuesto es la verdad á cargo de juram'to que tiene hecho en el que se afirmó y ratificó, les de que les fué en esta esposicion. Espresando el mayor de 35 años, casado y natural de este pueblo no firmo por no saber lo hice yo y los testigos de as'ta con quienes actuo, segun derecho.

JOSE PEREZ,
MANUEL ANZAGO.

Ass'a: VICENTE MORRAGA.

En el mismo dia, mes y año, siendo presente en este jusgado de mi cargo, D. Seferino Ruis en su persona, lo recibi juram'to ql. otorgó en todo forma á Dios n'tro Senor, y una señal de Cruz, de el que ofrecio decir en lo que sepa y sea preguntado y siendo que el contenido del decreto que motiva estas diligencias digo; que concede D. Bernardo Yorba natural de S'ta Ana, sujeto de conocido orden y que las notas que lo hacen agraciable en buenas circunstancias es casado, en segunda nupcias y tiene sus hijos hombres y mugeres; ql. el terreno ql. pretende no pertenece á alguna propiedad, del cual siembra por medio de viego de la agua que saco el rio de Santa Aña, en extension es de cuatro ó mas leguas y una y media de ancho; dicho sujeto tiene mucha abundancia de bienes de campo, tanto de ganado como de caballada, ql. esta es la verdad á cargo de juram'to en que se afirmó y ratificó les da que le fué la espo'cion espresado ser mayor de 38 años, y casado y natural de S'a Aña, y lo firmo con migo y los testigos de acistencia, segun derecho.

JOSE PEREZ.

Ass'a: MANUEL ANZAGA,
Ass'a: VICENTE MORRAGA.

Concluida la presente informacion remitase al conocimiento del S'or Gefé Superior Politico, segun ordena de su decreto fecha do del pasado para los fines que sean consiguientes. José Perez, Alcalde Const'l de este pueblo de los Angeles, asi lo acordé, mandé y firmé, con los testigos de asistencia. Segun derecho.

JOSE PEREZ,
MANUEL ANZAGA,
VICENTE MORRAGA.

Van estas diligencias en papel comun por no haber en este Pueblo del ql. corresponde ni de ningun otro.

MORR.
JOSE PEREZ.

[*For map see original, between pages* 25 & 26.]

Sello Tercero—Dos Reales.

Habilitado provicionalmente por la administracion de la Aduana Maritima del puerto de Monterey, para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

RAFAEL GONZALES.

FIGUEROA.

MONTEREY, *Julio* 30, *de* 1834.

Vista la peticion con que da principio este espediente el informe de la autoridad municipal del pueblo de los Angeles, y del padre ministro de la mision de San Gabriel, los aparciones de testigos con todo lo demas q. se tribo presente y ver convino; de conformidad con lo dispuesto por las leyes y reglamentos de la materia si declaro, al Ciud'o Bernardo Yorba, dueño en propiedad del paraje nombrado el Cañon de Santa Ana, colindante con la Mision de San Gabriel y rancho de S'ta Ana y Santa Gertrudis, bajo las condiciones q'l se estipulan; dirijase este expediente á la ecelentisima disputacion para la debida aprobacion. El Sor. D. José Figueroa, general de brigada del ejercito, Comand'to General, Inspector y Gefé superior politico del territorio de la Alta California, asi lo mando, decreto y firmo, de que doy fée.

JOSE FIGUEROA.
AGUSTIN V. ZAMORANO, *S'rio.*

MONTEREY, *Julio* 30, *de* 1834.

En sesion de este dia acordó la E. Diputacion, pasé este espediente á las comiciones de colonisacion y terrenos baldios.

FIGUEROA.
JOSE M'A MALDONADO,
Secretario.

Ex'mo S'or:

La comision encargada de colonisacion de terrenos baldios, impuesto de este espediente, que se mandé, practicar y presencion que el Ciud'o Bernardo Yorba, hiso del parage nombrado Cañon de S'ta Ana, y no encontrando en el objecion alguna, q'l husen siendo en todo conforme con la ley de 18 de Agosto, de 1824, y el articulo 5 del reglamento de 21 Noviembre, de 1828, ofrese á la deliberacion de esta Ex'ma Diputacion la siguiente proposicion. Se aprueba la concesion hecha al Ciud'o Bernardo Yorba, del paraje nombrado Cañon de S'ta Ana. Monterey, Julio 31, de 1834.

JOSE P. ORTEGA,
CARLOS ANT'O CARILLO,
JOSE R. ESTUDILLO.

MONTEREY, *Febrero* 31, *de* 1834.

Dada cuenta á la E. Diputacion en sesion de hoy con el antecedente dictamen, apruebo la proposicion en que concluye y dice que se aprueba

la concesion hecha al C. Bernardo Yorba del paraje Cañon de S'ta Ana. Y en consecuencia se devuelve el expediente al S. G. Politico por su auto. Monterey, Julio 31, de 1834.

JOSE FIGUEROA.
JOSE MARIA MALDONADO.

Sello Tercero—Dos Reales.

Habilitado provicionalmente por la administracion de la Aduana Maritima de Monterey, p'a los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

RAFAEL GONZALES.

FIGUEROA.

MONTEREY, 1*o de Agosto, de* 1834.

En vista del acuerdo de la Ex'ma Diputacion Territorial del dia 31 de Julio de ult'o, del confirmacion del terreno del Cañon de Santa Ana, solicitado por el Ciud'o Bernardo Yorba; librese el titulo respectivo, tomese razon de el en el libro à que corresponde y entreguese al interesado para su resguardo y demas fines. El S. D. José Figueroa, general de brigada, comand'te general inspector y gefé superior politico del territorio de la Alta California, asi lo mandé, decreto y firmé, doy fee.

JOSE FIGUEROA.
AGUSTIN V. ZAMORANO, *S'rio.*

José Figueroa, General de brigada de la republica Mexicana, Comand'te general, Inspector y Gefé superior politico de la Alta California.

Por cuanto al Ciud'o Bernardo Yorba, Mejicano por nacimiento, ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre Cañon de S'ta Ana, colindante con la Mision de San Gabriel y rancho de S'ta Ana y S'ta Gertrudis; practicadas previamente las diligencias y averiguaciones concernientes, segun lo dispuesto por leyes y reglamentos de la materia usando de las facultades que me son conferidas á nombre de la nacion Mejicana, y de conformidad con el acuerdo de la Ex'ma Diputacion territorial, del dia 31 de Julio, aprovando la concesion del sitado terreno del Cañon de Santa Ana, echo en decreto de 30 del mismo mes, al referido Ciud'o Bernardo Yorba, ha nombre de la nacion Mejicana, he venido en conferirle la propiedad de el por las presentes letras y sujeto á las condiciones seguientes:

1o. Que se sometará á las que estableciere el reglamento y se le da de formar pa. la distribucion de terrenos baldios, y ql. entretanto ni el agraciado ni sus herederos podran dividir ni enagenar el que se les adjudica, imponer censo, vinculo, fianza, hipoteca ni otro gravamen, aunque sea por causa piadosa ni pasarlo á manos muertas.

2o. Podra cercarlo sin perjudicar las trevesias caminos y servidumbres, lo disfrutará libre y esclusivamente destinandolo al uso o cultivo ql. mas le acomode, pero dentro de un año fabricará casa y estara habitada.

3o. Solicitara del juez respectivo que se le de posecion juridica, en vertud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra á mas de las mohoneras algunos, arboles, frutales, ó silvestres de alguna utilidad.

4o. El terreno de ql. hace mencion es de tres sitios de ganado mayor, segun esplica el diseño ql. corre en el espediente. El juez que diere la posecion lo hara medir conforme á ordenanza para señalar los linderos quedando el sobrante que resulte á la nacion, para los usos convenientes.

5o. Si contraveniere á estas condiciones perdera su derecho al terreno y sera denunciable por otro.

En consecuencia mando que teniendose por firme y valedero este titulo se tome razon de el en el libro, á que corresponda y se entreque al interesado pa. su resguardo y demas fines.

Dado en Monterey, a 1o de Ag'to, de 1834.

JOSE FIGUEROA.
AGUSTIN V. ZAMORANO, *S'rio.*

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, Surveyor General or the United States for the State of California, and, as such, now having in my office and under my charge and control a portion of the archives of the former Spanish and Mexican territory, a department of Upper California, under and by virtue of an act of Congress approved the 5th day of March, 1853, providing for the surveys of public lands of California, and other purposes, do hereby certify that the twenty preceding and hereunto annexed pages of tracing paper, numbered from 1 to 20 inclusive, and each of which is verified by my initials, (S. D. K.) exhibit true and accurate copy of a document on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially, and affixed my private seal in lieu of the seal of office, which has not arrived at the city of San Francisco, Cal., this 7th day of July, 1853.

SAMUEL D KING,
Surveyor G'l California.

Filed in office, Sept. 26th, 1853.

GEO. FISHER, *Sec'y.*

Opinion of the Board.

BERNARDO YORBA
vs.
THE UNITED STATES. } Case No. 387.

"El Cañon de Santa Ana," in the county of Los Angelos.

This is a claim for three leagues of land, founded on a grant made to the claimant by Gov. José Figueroa, on the 1st of August, 1834.

This is one of the very few cases which have come under the observation of the board, in which the requisitions of the Mexican colonization law of August, 1824, and the regulations of Nov. 21st, 1828, appear to have been strictly and literally complied with. The documentary evidence filed in the case shows, that after all the proceedings had been taken, and inquiries made, which were required by the laws and regulations, a decree of concession was made by the governor on the 30th of July, 1834; on the following day the decree was submitted to the territorial deputation for their approbation, and was duly approved by that body, in conformity to which the grant or title in form was issued to the grantee on the 1st of August, 1834; on the 11th day of December of the same year, juridical possession of the land granted was given by the proper officer, in due form of law, and the boundaries designated and defined with unusual accuracy and certainty. So far as appears from the record in this case, this may be considered as perfect title under the Mexican law, investing the grantee with the full legal estate in the premises granted. The only question that could by possibility arise in the case, is in relation to one of the lines of the survey, as described in the act of juridical possession. The survey in this instance, contrary to the almost uniform practice in California, appears to have been made with the aid of a compass, and the first line commencing on the river, and evidently to run with, and bind upon it, calls for the course west 16° south, which appears from the map to be the general direction of the river at that point, but a continuation of the line in its whole extent, in that direction, would leave the river far to the south; this discrepancy, however, is corrected by the evidence of the surveyor himself, taken in the case, which establishes the river as one of the boundaries, as well as by the grant, which refers for a part of the description to the map, on which the river is also delineated as the southern boundary. This, according to the well-established legal doctrine, that course and distance must always yield to a well-defined and well-established natural object or boundary, removes all difficulty on the subject, and fixes that line beyond all doubt. The genuineness of all the original documents in relation to the title and juridical possession is duly proved; it is also in evidence that at the time the juridical possession was given, a little more than four months from the date of the grant, the claimant had a house on the land, in which he lived with his family, and has resided there ever since; that he has had large stocks of cattle, horses, and sheep; he has two vineyards, and has been always one of the most extensive cultivators of land in that section of the country.

Upon a view of the whole case, we consider it one of the best established claims which has been submitted to us for adjudication; a decree of confirmation will accordingly be entered.

Filed in office, Jan. 24th, 1854.

GEO. FISHER, *Secy.*

Decree of Confirmation.

BERNARDO YORBA
vs.
THE UNITED STATES. } Case No. 387.

"El Cañon de Santa Ana."

In this case, on hearing the proofs and allegations, it is adjudged by the board, that the claim of the petitioner is valid, and it is therefore decreed that the same be confirmed.

The land of which confirmation is made is of three square leagues in extent, a little more or less, situated in the county of Los Angeles, being the same which has been held and occupied by the present claimant, from the year 1834 to the time of filing his petition before this board, and is bounded as follows: Beginning on the bank of the river Santa Ana, near the mouth of the Cañada de los Alisos, and running southwest with the course of said river, and binding thereon fifteen thousand varas; thence north 9° west 5500 varas; thence east 16° north 1400 varas; thence south 40° east 5200 varas, to the point of beginning on the river. Reference for a more particular description to be had to the original grant, the record of juridical possession and map, all of which are on file in the case.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON.

Filed in office, Jan'y 24, 1854.

GEO. FISHER, *Sec'y*.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-four pages, numbered from 1 to 34, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file in this office, in case No. 387 on the docket of the said board, wherein Bernardo Yorba is the claimant against the United States, for the place known by the name of Cañada de Santa Anita.

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, [Priv. Seal.] California, this twelfth day of September, A. D. 1854, and of the independence of the United States of America the seventy ninth.

GEO. FISHER, *Sec'y*.

UNITED STATES DISTRICT COURT,
Southern District of California.

CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify that the foregoing 35 pages, numbered from 1 to 35, both inclusive, contain a full, true, and correct copy of transcript No. 387, filed in this office, wherein Bernardo Yorba is the appellee, and the United States are the appellants, for the place called Cañon de Santa Ana.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Los Angeles, California, this 20th day of December, A. D. 1855, and of the independence of the United States of America the eightieth.

[L. S.]

C. E. CARR, *Cl'k.*

UNITED STATES DISTRICT COURT,
Southern District of California.

CLERK'S OFFICE, LOS ANGELES.

BERNARDO YORBA, appellee, ads. THE UNITED STATES, appellant. } Docket No. 89. Transcript No. 387.

Be it remembered, that on the 20th day of September, A. D. 1854, in the district court of the United States for the southern district of California, the following proceedings were had, to wit:

A duly certified transcript of the proceedings and decision, and the papers and evidence upon which the said decision was founded, of the commissioners to ascertain and settle the private land claims in the State of California, when sitting as a board, in the case wherein Bernardo Yorba is the claimant against the United States, for the place named Cañon de Santa Ana, was received and filed and docketed with No. 89, and is as follows, to wit:

(Vide page 1.)

LOS ANGELES, *Jan'y 10th*, 1855.

In case No. 89, Bernardo Yorba, for Cañon de Santa Ana, the notice of appeal from U. S. Attorney General was filed.

(Vide page 1.)

LOS ANGELES, *Aug. 13th*, 1855.

In same case the petition of the United States for review was filed.

(Vide page 1.)

Upon which petition, the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *Sept.* 19, 1855.

In same case the answer of appellee was filed.

(Vide page 7.)

Los Angeles, *Oct.* 5, *A. D.* 1855.

In same case the espediente of appellee was filed in open court.

(Vide page 9.)

Los Angeles, *Oct. 8th*, 1855.

In same case a stipulation was filed.

(Vide page 17.)

Los Angeles, *Oct. 9th*, 1855.

In same case the opinion of the court confirming the claim was delivered, and the following decree entered:

(Vide page 18.)

Los Angeles, *Oct.* 18*th*, 1855.

In same case, on motion of P. Ord, U. S. Attorney, the order of appeal was filed.

(Vide page 19.)

Appeal Notice.

Office of the Attorney General of the United States,
Washington, 30*th November*, 1854.

Bernardo Yorba
vs. } 387.
The United States.

You will please take notice, that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 30th day of August, 1854, the appeal in the district court of the United States for the southern district of California will be prosecuted by the United States.

(Signed) C. CUSHING,
Attorney General.

Filed Jan'y 10th, 1855.
(Signed) C. E. CARR, *Clk.*

In the District Court of the United States for the southern district of California.

Los Angeles county, State of California.

Bernardo Yorba
vs. } No. 89.—Transcript No. 387.
The United States.

Petition for Review.

To the honorable Isaac S. K. Ogier, judge of the district court of the United States for the southern district of California.

The petition of Pacificus Ord, (of Los Angeles county,) attorney of the United States for the southern district of California, who petitions

in this behalf for the United States; and being present here in court in his proper person, in the name and behalf of the United States, represents as follows:

That heretofore, to wit, on or about the 9th day of October, A. D. 1852, Bernardo Yorba presented a petition to the commissioners to ascertain and settle private land claims in the State of California, claiming the tract of land called Cañon de Santa Ana, in the county of Los Angeles, in the words and figures following, viz.:

"To the honorable commissioners for ascertaining and settling private land claims in California: Bernardo Yorba respectfully represents, that on the 30th of July, 1834, a concession of land was made to him by José Figueroa, then governor of California, acting under authority of the laws then in force; which concession was in due form approved by the Territorial Deputation on the 31st of July, 1834, and a formal grant of the land, as title, was issued to him on the 1st of August, 1834; that the land thus granted is called the 'Cañon de Sta. Ana,' with boundaries defined in the title, containing three leagues, more or less, and is situated in the present county of Los Angeles; that judicial possession of the land was given to him on the 11th of December, 1834. That he has lived upon the land since the date of the grant, or a short time thereafter. He knows of no other claim to any part of the land. He herewith files the original grant and act of judicial possession, marked 'Exhibit A,' with a translation thereof, marked *a*, and relies, in support of his claim, upon said documents and such other evidence as he may hereafter present, and prays the confirmation of his title."

Your petitioner further represents, that thereafter, to wit, on the 24th day of January, A. D. 1854, the said commissioners confirmed, by final decree, the said claim of the said Bernardo Yorba, in the words and figures following, to wit:

"In this case, on hearing the proofs and allegations, it is adjudged by the board that the claim of the petitioner is valid, and it is therefore decreed that the same be confirmed. The land, of which confirmation is made, is of three square leagues in extent, a little more or less, situated in the county of Los Angeles, being the same which has been held and occupied by the present claimant from the year 1834 to the time of filing his petition before this board, and is bounded as follows: Beginning on the bank of the river Santa Ana, near the mouth of the Cañada de los Alisos, and running southwest with the course of said river, and bounding thereon, fifteen thousand varas, thence north 9° west 5,500 varas, thence east 16° north 1,400 varas, thence south 40° east 5,200 varas, to the point of beginning on the river. Reference for a more particular description to be had to the original grant, the record of judicial possession and map, all of which are on file in the case.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUGT. THOMPSON."

That thereafter, to wit, on the 20th day of September, A. D. 1854, a duly certified transcript of said decree and proceedings, and the

papers and evidence on which it was founded, in said cause, was filed in the office of the clerk of the district court of the United States for the southern district of California, and marked No. 89, (Transcript No. 387;) reference to which it is prayed may be had and made a part of this petition.

That on the 30th day of August, A. D. 1854, the honorable Caleb Cushing, Attorney General of the United States, received a duly certified duplicate of said transcript of said final decree and proceedings of said commissioners in said case, (No. 387,) and the papers and evidence on which said decree was founded.

That thereafter, to wit, on the 10th day of January, A. D. 1855, the said Attorney General of the United States filed, or caused to be filed on behalf of the United States, a notice with said clerk of said district court for the southern district of California, that the appeal in said cause of Bernardo Yorba *vs.* The United States, from the decision of said commissioners to ascertain and settle the private land claims in the State of California, in the district court of the United States for the southern district of California, would be prosecuted by the United States.

Your petitioner further represents, that the said land claimed as aforesaid is within the jurisdiction of this honorable court. And your petitioner further represents and insists, that the said decree of said commissioners is erroneous, and ought to be reviewed, reversed, and set aside for many errors and imperfections of law and evidence, apparent in said certified transcript of said cause, now on appeal from said commissioners to this honorable court.

And your petitioner further represents, that the said claim is invalid, and the said decree erroneous, on the following grounds:

I. And the said attorney denies all and singular each and every allegation in the said petition of the said claimant to said commissioners of said date. And he further denies, that any grant for said land was ever made as alleged in said petition; and he denies, further, that the said claimant has shown any or sufficient evidence of the validity of the said claim.

II. That the alleged grant of José Figueroa was made in violation of the 4th article of the colonization law of Mexico, of the 18th of August, A. D. 1824, in this, that the land granted, as alleged by claimant, was and is within ten leagues of the seacoast; and there is no evidence shown by claimant, that the supreme general executive power of Mexico previously approved of the colonization of the public lands in Upper California, lying within ten leagues of the seacoast; and it is denied that such previous consent of said supreme general executive power of Mexico in such case was ever had.

III. That at the date of said alleged grant, the said land claimed as aforesaid was occupied by, and in the possession of, the missions of the Territory of Upper California, and it was held and occupied particularly by the mission of San Gabriel, and could not therefore be colonized.

IV. That the said alleged grant has not the conditions required by, and is not made in entire conformity with, the laws of Mexico of the 18th day of August, A. D. 1824, and the regulations for the colonization of the territories of Mexico, of the 21st November, A. D. 1828.

V. That the said alleged grant of land by José Figueroa to said claimant, of said date, does not contain any sufficient description of the locality, extent and boundaries, so that it can be identified and surveyed; that the map therein referred to, as shown by the claimant, does not correspond or agree with the description and boundaries of the land as set forth in said alleged grant, and the said alleged grant is vague, indefinite, and void, for uncertainty.

VI. That the measurement and judicial possession of said land, alleged to have been made and given by José Perez, on the 11th of December, 1834, was not made in conformity with the said alleged grant, and the map referred to therein; nor according to the ordinance or law. That the said measurement and possession includes lands not granted in said alleged original concession. That the said alleged act of judicial possession is not upon the lawful stamped paper, and it is vague and indefinite.

VII. That there is no evidence that the said José Perez and Abel Stearns had lawful authority to perform said alleged judicial acts of survey and possession of said land, and it is denied that they had lawful authority to perform said alleged judicial acts.

VIII. That there is no sufficient evidence that the said claimant performed the conditions of the said alleged grant, and it is denied that he performed the conditions of said alleged grant.

IX. That there is no evidence that the said alleged grant was ever approved by the supreme government of Mexico, and it is denied that it was ever approved by said supreme government.

X. That the said claimant shows no definitively valid grant or title for said land, and it is denied that he has, or ever had, a definitively valid grant or title for said land claimed by him as aforesaid, and no sufficient proofs having been made by said claimant of the allegations of his said petition, or in support of his said claim filed as aforesaid, no decree ought to have been made or grounded thereon; but the said petition ought to have been dismissed, and said claim rejected by said commissioners, upon the grounds aforesaid.

And the said claimant having no valid right or title derived from the Spanish or Mexican government to the said lands claimed by him as aforesaid, the lawful right or title in and to the said land was acquired by, and it now belongs to, the said United States, by virtue of the treaty of peace, friendship, limits, and settlement with the republic of Mexico, dated at the city of Gaudaloupe Hidalgo, February 2nd, A. D. 1848.

Wherefore, the said Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, by reason of the premises, and in pursuance of the act of Congress entitled "An act to ascertain and settle the private land claims

in the State of California," approved March 3d, A. D. 1851, and the laws and statutes in such case made and provided, prays that the said Bernardo Yorba may be served with a copy of this petition; and that this honorable court will review the said decision or final decree of confirmation of said commissioners to ascertain and settle the private land claims in the State of California, and decide on the validity of the said claim of said Bernardo Yorba, for said land claimed and confirmed as aforesaid; and that the same may be decreed invalid; and all such other orders, judgments, or decrees as may be just, with costs and general relief.

(Signed) P. ORD,
Attorney of the United States for the southern district of California.

Filed August 13th, 1855.
(Signed) C. E. CARR, *Clk.*

IN THE DISTRICT COURT OF THE UNITED STATES,
For the Southern District of California.

BERNARDO YORBA ads. THE UNITED STATES. } No. 89.—Transcript, No. 387.

Answer.

To the honorable Isaac S. K. Ogier, judge of the district court of the United States for the southern district of California.

The answer of Bernardo Yorba, a citizen of the United States, residing in the county of Los Angeles, in the State of California, to the petition of review filed in the above entitled cause, at the suit of the United States against him, praying that a certain final decree of confirmation entered in his favor by the United States land commissioners appointed to ascertain and settle the private land claims in the State of California, in a certain claim for a tract of land called "Cañon de Santa Ana," respectfully represents, that this defendant admits that he did present his petition to the said commissioners for the tract of land described in said petition, and that the said commissioners did enter a final decree of confirmation in his behalf for the said tract of land. And this defendant, further answering, saith, that he claims the said tract of land *claimed* "Cañon de Santa Ana," with the metes and bounds referred to in the transcript from said commissioners relating to his said claim, which transcript was filed in the clerk's office of your honorable court, on the day of , and is hereunto specially referred and made a part of his answer; that he claims the same in virtue of a grant in fee thereof, made to him as set forth in his petition presented to said commissioners, filed in the office of the secretary of the board of the said commissioners on the day of , as appears in said transcript, on the day of , by José Figueroa, then governor of California, by virtue of authority in him vested by law, that the metes and bounds of said claim are accurately defined in the map and judicial survey and pos-

session thereof, both of which appear in said transcript hereunto specially referred, and made a part of this answer.

And this defendant, further answering, saith, that he has faithfully discharged all the conditions imposed upon him by said grant; and he further avers, that his said claim is valid, as appears by the said transcript and the decree of the said commissioners, and as will be made to appear by such further proof as may be taken by order of your honor; and that the final decree of said commissioners is valid according to the laws, usages, and customs of Spain and Mexico, as they existed in California, and according to the treaty of Gaudaloupe Hidalgo, the laws of nations, the principles of equity, and the decisions of the Supreme Court of the United States, as far as they are applicable.

And defendant, further answering, denies all and singular the allegations in plaintiff's petition contained, excepting such as are herein admitted.

And this defendant further avers, that there exists no cause, by reason of anything alleged in said petition, why said final decree should be declared invalid.

Wherefore the defendant prays, that your honor do declare the said final decree of said commissioners, as well as the claim and title of this defendant to the said land, to be valid, that the petition of the United States be dismissed, and for costs and general relief.

(Signed) AGUSTIN OLVERA,
Att'y for Appellee.

Filed Sept. 19, 1855.

C. E. CARR, *Cl'k.*

Espediente.

SUPERIOR POLITICAL CHIEF:

I, Bernardo Yorba, a resident of and permanently established in the rancho of Santa Ana, appertaining to the jurisdiction of the pueblo of Los Angeles, before you in the manner most suitable to my rights, do appear and declare, that having been married in first nuptials, in which wedlock I had three children, called Raimundo, Ynes, and Ramona, on contracting matrimony a second time, on account of the death, (sense incomplete,) for my said three children, some stock or cattle, with which of my lawful property, being (sense incomplete) that I actually possess the same; and being of itself a number which requires (two words illegible) of the small extent of land which we occupy, four children, I am obliged and under the necessity of requesting from your consideration, that you be pleased to grant to me for the benefit of my said three children the land occupied, the place known by the name of Cañon de Santa Ana, bounding with the rancho of the same name, with that of Santa Gertrudis, and with the Mission of San Gabriel, if the whole land is pasturage land, and very broken or hilly, consisting of seven thousand varas from south to north, and seven thousand two hundred and fifty from east to west, with three small watering-places.

Neither is it the property of any one, nor comprehended within the twenty leagues of the border, or ten from the seacoast, which are expressed in the law. For this purpose, I duly accompany the map of the same, which will give you an exact idea of said tract of land, and also from all that I have set forth. Therefore, I request and pray that you will deign to grant my solicitation, after having procured the necessary information, for which favor I shall be thankful. Please admit this on common paper, there being none in this town of the proper stamp.

Pueblo of Los Angeles, February 15th, 1834.

BERNARDO YORBA.

(On the margin of the foregoing petition.)

PUEBLO OF LOS ANGELES, 26*th February*, 1834.

In conformity with the law on the subject, let the honorable ayuntamiento of the Pueblo of Los Angeles report whether the petitioner, in this instance, possesses the requisites necessary to his being attended to; whether the tract of land which he solicits is comprehended in the twenty leagues from the border, or ten from the seacoast, expressed in the law of 18th August, 1824; whether it is irrigable, cultivable without irrigation, or pasturage land; whether "it is the property of any private person, corporation, or town, with everything else which may throw light on the subject. This done, let this expediente be passed to the priest minister of the Mission of San Gabriel, that he may report what occurs to him.

Don José Figueroa, General of Brigade, Superior Political Chief of the Territory of Upper California, so ordered, decreed, and signed, which I attest.

(Signed) JOSE FIGUEROA.

PUEBLO OF LOS ANGELES, *March 6th*, 1834.

In virtue of the preceding decree of the Political Chief of this Territory, the Hon. Ayuntamiente reports, that the citizen Bernardo Yorba is a person known for his orderly conduct; that he has all the requisites provided for conferring upon him the favor which he solicits; that the land which he requests is not comprehended in the twenty leagues from the border, nor the ten leagues from the seacoast, expressed in the law of 18th August, 1824; that it is pasture land, with three small watering-places on the same; that it is comprehended as vacant land, there being no domestic animals on it, other than a small number of neat cattle and horses, all of common property—bounding with the ranchos of Santa Ana and Santa Gertrudes, and the Mission of San Gabriel; and this is all that this Ayuntamiento has to report relative to the matter.

JOSE PEREZ.

VICENTE MORAGA, *Secretary*.

MISSION OF SAN GABRIEL, 19*th March*, 1834.

In virtue of the report asked of said Mission, with respect to the place known by the name of Cañon de Santa Ana, bounding with the rancho of Santa Ana, with that of Santa Gertrudes, and with this Mission, I represent that the land solicited by Don Bernardo Yorba is not nor has been vacant land, but occupied by cattle of the Mission, on which the property exists from the time when the Yorbas had no neat cattle, until this date, according to the unanimous testimony of all the neophytes in charge of the rancho of Santa Ana; in consequence of the continued running (corridas) of horses, a small number of cattle have fled to the hills and other places, as is known to the petitioner himself, who can affirm that when the neophytes of this Mission made their order, the Yorba's separated theirs and the Mission as has been related, and remained in pacific possession of said tract of land; besides, the citizen Francisco Feliz, who was encharged by the deceased priest Francisco Sanchez, previous to his death, for the purpose of examining said tract, with the design of establishing a new rancho in the same tract, with the intention that this person should remain as mayordomo in the same, to look after and take care of the abundant number of neat cattle which roamed in the rancho of Santa Ana; and with the sole object of preventing, in part, the great detriment resulting against the Mission by the continued killing of cattle at that place and its neighborhood; the rev'd priest Francisco José Sanchez died, and the business remained (sixteen words illegible) rancho of Santa Ana.

This is all that I have to report in this matter.

FR. THOMAS ESTENAGA.

PUEBLO OF LOS ANGELES, *April 7th*, 1834.

The Hon. Ayuntamiento of this town, in consideration of the preceding report of the reverend father Fr. Thomas Estenaga, minister of the Mission of San Gabriel, in which he contradicts the report made by this body of date 6th March last, has ordered to be set forth, out of respect to its honor and the integrity with which it has acted in this matter, as follows: That the tract of land requested by the citizen Bernardo Yorba is on the footing and in the circumstances set forth in the aforesaid report of 6th March of the present year, and in testimony of the truth, it proceeds to explain that in the year 1824, at the time that the rev'd priest Fr. José Sanchez was minister of said Mission, the mayordomo, Francisco Feliz, undertook, probably by order of said priest, to determine to the Mission that said tract was not its property, (illegible,) the injury that by said (illegible) would result to Peralto, and the aforesaid mayordomo to do this by authority was (illegible) that proves the fact. This (illegible) that (illegible) gives (illegible) necessary, (illegible,) proves positively that the rev'd priest was mistaken in the opinion which he had formed with respect to this tract of land, as is shown by his report.

JOSE PEREZ.

VICENTE MORAGA, *Sect'y.*

MONTEREY, *May* 10*th*, 1834.

Let this pass to the Alcalde of the Pueblo of Los Angeles, before whom Bernardo Yorba will present a judicial inquiry and process of three proper witnesses to be interrogated respecting the following points: 1st. Whether the petitioner is a Mexican citizen by birth; if he is married, and has any children; and if he is of good conduct? 2nd. If the land which he requests is the property of any individual, Mission, town, or corporation; if it is irrigable, cultivable without irrigation, or pasturage land; and what is its extent? 3d. If he has stock or cattle to occupy the land, or a possibility of acquiring the same? This procedure having been complied with, let the espediente be returned, to pass resolution upon it. Don José Figueroa, General of Brigade, Commandant General and Superior Political Chief of Upper California, so ordered, decreed, and signed, which I attest.

JOSE FIGUEROA.
AUGUSTIN V. ZAMORANO, *Secretary.*

PUEBLO OF LOS ANGELES, *June* 9*th*, 1834.

Having received the present expediente; having taken the declaration mentioned in the decree of 10th of last month, and finished the same, let the original be returned to the prefecture for consequent measures. José Perez, constitutional alcalde of the pueblo of Los Angeles, so determined, ordered, and signed, with witnesses actually present, according to law. JOSE PEREZ.

Witness: MANUEL ANZAGA,
Witness: VICENTE MORAGA.

On the same day, month and year, being present the citizen José Seferino Reyes, resident of this place, who, under oath which he made in the usual form of law, by God our Lord and the sign of the cross, under which obligation he promised to speak the truth in what he knew or should be interrogated, and having been interrogated regarding the points contained in the proceeding decree which which was read to him entire, he declared: That he knows the citizen Bernardo Yorba; that he is a native of this Territory, married in second nuptials, and that he has six children, 3 sons and daughters; that his conduct is without fault, and that he is by common fame an honest man; that the tract of land named (Como) is vacant, that it is the property of nobody, is irrigable and watered by the river called of Santa Ana; that the extension of the tract is three or four leagues in length, and one and a half in breadth, a little more or less; that he has sufficient to stock the same both in cattle and horses; that what he declares is the truth, under the oath which he has given, and which he confirmed and ratified after this declaration being read to him, expressing that he is thirty years of age, married and a native of this town, and he did not sign, as he cannot write, and I signed with my witnesses actually present, according to law.

JOSE PEREZ.

Witness: MANUEL ANZAGA,
Witness: VICENTE MORAGA.

On the same date, being present Don Juan Perez, from which person I took oath, which he made in the form prescribed by law, by God our Lord and the sign of the cross, under which obligation he promised to speak the truth in what he knew and should be interrogated, and being interrogated on the points indicated in the decree of the political chief of date 10th of last month, he replied: That Don Bernardo Yorba is a man of good fame and conduct, and is in good circumstances; that he is married at Santa Ana, of which place he is a native; that he has three sons and three daughters; that the tract named the Cañon does not belong to any person, and the crops on the same are sown by said Yorba, which, (illegible) by irrigation, which he makes from the river of Santa Ana; this tract (illegible) may have four leagues in length and one in breadth; that he has a large number of cattle and horses, as in Santa Ana nobody has more stock than Bernardo Yorba; and he declares that what he has said is the truth, under the oath which he has taken, and which he confirmed and ratified after this declaration being read to him. He declared that he is 35 years of age, married, and a native of this town; he did not sign, as he cannot write, and I signed with the witnesses actually present, with whom I act, according to law.

JOSE PEREZ.

Witness: MANUEL ANZAGA,
Witness: VICENTE MORAGA.

On the same day, month and year, being present in this court, and under my charge, Don Seferino Ruiz in person, I administered to him the oath which he gave in due form, by God our Lord and the sign of the cross, by which he promised to speak the truth in what he knew and should be asked, and being interrogated respecting the contents of the decree which has occasioned these proceedings, he declared: That he knew Don Bernardo Yorba, native of Santa Ana, a person of known orderly conduct, and that the standing which makes him worthy of a grant is his good circumstances; he is married in second nuptials, and has sons and daughters; that the land which he solicits is not private property, of which he sows by means of irrigation, by water which he takes from the river of Santa Ana; its extension is four or more leagues, and one and a half in breadth; said individual has great abundance of stock, as well cattle as horses; that this is the truth under the oath which he confirms and ratifies after this declaration being read to him, declaring that he is 31 years of age, married, and a native of Santa Ana; and he signed this with me and the witnesses actually present, according to law.

JOSE PEREZ.

Witness: MANUEL ANZAGA,
Witness: VICENTE MORAGA.

The present judicial inquiry and process being concluded, let it be remitted to the cognizance of the superior political chief, as ordered in his decree of 10th of last month, for subsequent action. I José Perez,

constitutional alcalde of this pueblo of Los Angeles, have so disposed, ordered, and signed, with the witnesses actually present, according to law.

JOSE PEREZ,
MANUEL ANZAGA. VICENTE MORAGA.

These proceedings are written on common paper, there being no stamped paper of the class required, nor of any other class, in this town.

JOSE PEREZ.

Seal Third—Two Reals.

Licensed provisionally by the collectorship of the maritime custom-house of the port of Monterey, for the years one thousand eight hundred and fifty-four, and one thousand eight hundred and thirty-five.

RAFAEL GONZALEZ.

FIGUEROA.

MONTEREY, *July* 30*th*, 1834.

In view of the petition with which this espediente commences, the report of the municipal authority of the pueblo de Los Angeles, and of the priest minister of the mission of San Gabriel, the declarations of the witnesses, with every thing else which was accorded and was necessary to have in view; in conformity with the requirements of the laws and regulations of the matter, the citizen Bernardo Yorba is declared owner in fee of the tract named the Cañon of Santa Ana, bounding with the mission of San Gabriel, the ranchos of Santa Ana and Santa Gertrudes, under the conditions which are stipulated: Let this expediente be directed to the most excellent deputation for its due approbation: I, Don José Figueroa, general of brigade of the army, commandant general, inspector, and superior political chief of the Territory of Upper California, have so ordered, decreed, and signed, which I attest.

JOSE FIGUEROA,
AGUSTIN V. ZAMORANO, *Secretary*.

MONTEREY, *July* 30*th*, 1834.

In session of this day, the E. deputation resolved by common consent that this expediente pass to the committee of colonization and vacant lands.

FIGUEROA,
JOSE MA. MALDONADO, *Secretary*.

MOST EXCELLENT SIR: The committee of colonization and vacant lands, having acquired full knowledge of this espediente, which was ordered to be formed, and of the possession which the citizen Bernardo Yorba has had of the tract named Cañon de Santa Ana, and not finding any objections, that (illegible) being in every thing conformable with the law of 18th August, 1824, and article 5th of the regulations

of 21st November, 1828, presents to the deliberation of this most excellent deputation the following proposition: "The grant of the tract called Cañon de Santa Ana, made to the citizen Bernardo Yorba, is approved."

Monterey, July 31st, 1834.

CARLOS ANTO. CARRILLO.

JOSE J. ORTEGA,
JOSE R. ESTUDILLO.

MONTEREY, *February* 31*st*, 1834.

Having informed the E. deputation in session of this day, of the preceding opinion, it approves of, and (illegible) that the grant made to the citizen Bernardo Yorba, of the tract Cañon de Santa Ana, be approved; and consequently the espediente is returned to the superior political chief for his (illegible.)

Monterey, July 31st, 1834.

JOSE FIGUEROA,
JOSE MARIA MALDONADO.

Seal Third—Two Reals.

Licensed provisionally by the collectorship of the maritime custom-house of Monterey, for the years one thousand eight hundred and thirty-four, and one thousand eight hundred and thirty-five.

RAFAEL GONZALEZ.

FIGUEROA.

MONTEREY, 1*st August*, 1834.

In view of the result of the deliberation of the most excellent territorial deputation of 31st July last, for the confirmation of the tract of land of the Cañon de Santa Ana, solicited by the citizen Bernardo Yorba, let the respective title be issued; let the same be recorded in the proper book, and let it be delivered to the party concerned, for his security and other objects. I, Don José Figueroa, general of brigade, commandant general, inspector, and superior political chief of the Territory of Upper California, so ordered, decreed, and signed; I attest.

JOSE FIGUEROA.
AGUSTIN V. ZAMORANO, *Secy.*

José Figueroa, general of brigade of the Mexican republic, commandant general, inspector, and superior political chief of Upper California.

Whereas, the citizen, Bernardo Yorba, a Mexican by birth, has solicited for his personal benefit, and that of his family, the tract of land known by the name of Cañon de Santa Ana, bounding with the Mission of San Gabriel, and the ranchos of Santa Ana y Santa Gertrudes; the necessary proceedings having been previously taken, and the corresponding investigations made as required by the laws and regulations of the matter, in exercise of the powers conferred upon me, in the name of the Mexican nation, and in conformity with the resolution of the most excellent territorial deputation, of date 31st July, approving

of the grant of said tract of the Cañon de Santa Ana, made by decree of 30th of the same month, to the citizen Bernardo Yorba, in the name of the Mexican nation: I have granted to him the same in fee, by these presents, subject to the following conditions:

1st. That he shall submit himself to those which may be established by the regulations to be formed for the distribution of vacant lands, and that, in the mean time, neither the grantee nor his heirs shall have power to divide or alienate what is adjudicated to them, impose on it any quit-rent or annuity, entail, reversion or security, mortgage nor other encumbrance, even though for pious purposes, nor convey the same to mortmain.

2nd. He may enclose it without detriment to the cross-ways, roads, and servitudes; he shall enjoy, enjoy it freely and exclusively, applying it to the use or cultivation which may most suit him, but, within one year, he shall build a house, and it shall be inhabited.

3d. He shall solicit from the proper judge, that he give him judicial possession in virtue of this patent, by which the boundaries shall be marked out, in the limits of which, besides the land-marks (or monuments,) he shall plant some fruit trees or forest trees of some utility.

4th. The tract of land mentioned consists of three siteos de ganado mayor, (square leagues,) as explained in the map attached to the expediente. The judge who may give possession shall cause it to be measured agreeably to the ordinance for the making of boundaries, the surplus (or sobrante) which may result to remain to the nation for the purposes which may be expedient.

5th. If he should violate these conditions he shall lose his right to the land, and it shall be fit to be denounced by another person.

Wherefore, I order that, holding this title as firm and valid, it be recorded in the proper book, and delivered to the party concerned for his security and other objects.

Given at Monterey, the 1st of August, 1834.

JOSE FIGUEROA.

AGUSTIN V. ZAMORANO, *Sec'y.*

Filed in open court, October 5th, A. D. 1855.

C. E. CARR, *Cl'k*,

By JNO. W. ROSS, *Dep'y.*

District Court of the United States, southern district of California.

BERNARDO YORBA, appellee,
vs.
THE UNITED STATES, appellant. } No. 89.—Cañon de Santa Ana.

Admission by Att'y for Appellee.

On the trial of this cause in open court, it is hereby admitted by Myron Norton, attorney for the appellee, that the lands claimed and described in this case are situated in the county of Los Angeles, and southern district of the State of California, and within the jurisdiction of this court, and that the transcript from the land commissioners was

received by the United States Attorney General at the time, as alleged in petition for review; and further, that the transcript was filed in the clerk's office of this court, and the notice of the intention of the United States to prosecute the appeal in this case was also filed in said clerk's office, as alleged in said petition for review.

MYRON NORTON,
Att'y for Appellee.

Filed Oct'r 8th, 1855.

C. E. CARR, *Clerk*,
By JOHN W. ROSS, *Dep'ty.*

UNITED STATES, appel't,
vs.
BERNARDO YORBA, appel'e.
} No. 89.—"Cañon de Santa Ana."

Decree.

This cause coming on to be heard, at a special term of this court, on an appeal from the final decision of the commissioners to ascertain and settle private land claims in the State of California, under the act of Congress approved March 3d, 1851, upon the transcript of the decision and proceedings, and the papers and evidence on which said decision was founded, and on additional testimony taken in this court; and it appearing that said transcript has been duly filed according to law, and counsel for the respective parties having been heard: It is ordered, adjudged and decreed, that the decision of the said commissioners be affirmed, and that the claim of the said Bernardo Yorba to the land described in the grant in this case is a good and valid claim, and the same is hereby confirmed, to the extent of three square leagues. Provided, that the said quantity of three square leagues be contained within the limits called for in said grant, and the map to which it refers; but if there be less than said less-named quantity, then the claim of said appellee to said less quantity is hereby confirmed.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the Southern Dist. Cal.

Filed Oct. 9th, 1855. C. E. CARR, *Cl'k.*

Filed Oct. 9th, 1855.
(Signed) C. E. CARR, *Cl'k.*

In the United States District Court for the southern district of California.

Special Term, Los Angeles, Sept., 1855.

BERNARDO YORBA, app.,
ads.
THE UNITED STATES, app't.
} No. 89.—Transcript No. 387.

Appeal Notice.

On motion of P. Ord, attorney of the United States for the southern district of California, it is ordered by the court, that an appeal be

granted the United States to the Supreme Court of the United States, from the judgment of this court against the United States, on or about the 9th day of October, A. D. 1855.

(Signed) P. ORD,
U. S. Dist. Att'y.

Filed October 18th, 1855.

C. E. CARR, *Clerk.*
By J. W. ROSS, *Dep'y.*

UNITED STATES DISTRICT COURT,
Southern district of California.

CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify the foregoing 19 pages, numbered 1 to 19, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said court, of the documentary evidence, and of testimony of witnesses upon which the same is founded, on file in this office, in case No. 89 on the docket of the said court, wherein Bernardo Yorba is appellee, and the United States are appellants, for Cañon de Santa Ana.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Los Angeles, California, this twentieth day of December, A. D. 1855, and of the independence of the United States of America the eightieth.

[L. S.]

C. E. CARR, *Cl'k.*

SUPREME COURT OF THE UNITED STATES.

No. 208.

THE UNITED STATES, APP'TS,

vs.

BERNARDO YORBA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

"La Sierra."

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1 *Transcript of the proceedings in case No. 382.*

BERNARDO YORBA, claimant,
vs.
THE UNITED STATES, defendant.
} For the place named "La Sierra."

3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on this ninth day of October, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Bernardo Yorba, for the place named La Sierra, was presented, and ordered to be filed and docketed with No. 382, and is as follows, to wit:

(*Vide* page 3 of this transcript.)

Upon which petition the following proceedings were had, in their chronological order, to wit:

LOS ANGELES, *Oct.* 15, 1852.

In case No. 382, Bernardo Yorba, for the place named "La Sierra," the deposition of Ygnacio F. Coronel, taken before Commissioner Hiland Hall, with document marked A. H, H., and translation thereof, marked A, annexed thereto was filed.

(*Vide* page 4 of this transcript.)

LOS ANGELES, *Oct.* 19, 1852.

In the same case, the deposition of Abel Stearns, a witness on behalf of the claimant, taken before Commissioner Hiland
4 Hall, was filed.

(*Vide* page 5 of this transcript.)

LOS ANGELES, *Oct.* 20, 1852.

In the same case the deposition of José Antonio Carillo, a witness on behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(*Vide* page 7 of this transcript.)

LOS ANGELES, *Oct.* 22, 1852.

In the same case, the deposition of Benj. D. Wilson, a witness on behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(*Vide* page 8 of this transcript.)

Los Angeles, *Oct.* 25, 1852.

In the same case, the deposition of Leonardo Cota, a witness on behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(*Vide* page 9 of this transcript.)

San Francisco, *Sept.* 26, 1853.

Case No. 382 called. Submitted on brief on both sides, and taken under advisement by the board.

San Francisco, *Feb.* 14, 1854.

In the same case, Commissioner Thompson Campbell delivered the opinion of the majority of the board, rejecting the claim.

(*Vide* page 41 of this transcript.)

5 In the same case, Commissioner R. Aug. Thompson delivered his dissenting opinion.

(*Vide* page 44 of this transcript.)

6 *Petition.*

To the Hon. commissioners for ascertaining and settling private land claims in California:

Bernardo Yorba represents that for more than twenty years prior to the 15th of June, 1846, he and those under whom he claimed, with the permission and sanction of the authorities of the country, occupied and possessed, as owner, a tract of four leagues, more or less, of land, called "La Sierra," bounded by the river Santa Clara and the Rancho de Temarcal, and within the limits of the present county of Los Angeles.

That on the 15th of June, 1846, a formal grant of said land was made by Pio Pico, then governor of California, under authority of the laws then in force, and juridical possession of the land was given on the 19th of July, 1846, all of which will appear by reference to Exhibit A, herewith filed, with a translation, marked D, containing the said original title and act of possession, upon which, and such other evidence as he may hereafter present, he relies to support his claim.

He knows of no other claim to any part of the land.

He prays that his title be confirmed.

A. P. CRITTENDEN,
Att'y for Claimant.

Filed in office October 9th, 1852.

GEO. FISHER, *Sec'y.*

7 *Deposition of Ygnacio F. Coronel.*

Los Angeles, *Oct.* 15*th*, 1852.

On this 15th day of October, 1852, before me, Hiland Hall, one of the commissioners for ascertaining and settling private land claims

in California, personally appeared Ygnacio Coronel, a witness produced on the part of Bernardo Yorba, claimant of La Sierra, which claim is No. 382 on the docket of said commissioners, who, being duly sworn, testified as follows:

The associate law agent of the United States was notified, and attended.

Examined by claimant:

Question first. What is your name, age, and where do you reside? If in California, how long have you resided here?

Answer. My name is Ygnacio F. Coronel; I am fifty-eight years of age; I live in Los Angelos, and have reided in California about nineteen years.

Question second. Are you acquainted with the signatures of Pio Pico, José Matias Moreno, and Leonardo Cota?

Answer. I am.

Question third. Examine the document on file in this case, marked Exhibit A, and say whether or not the signatures of these persons are genuine?

Answer. I have examined said document. The signatures of Pio Pico and José Matias Moreno to the grant, of Moreno to the certificate which follows it, and of Leonardo Cota to the act of possession, are genuine. The last paper—the copy of the juridicial possession—was signed by Leonardo Cota in my presence, and I signed it also as a witness.

8 Question fourth. Who was governor of California during the month of June. 1846, and who was sec'y?

Answer. Dn. Pio Pico was governor, and José Ma. Covarrubias secretary. In the absence of Covarrubias, José Matias Moreno acted as ecretary.

Question fifth. Do you know where the rancho called La Sierra is? If yes, state what you know in regard to its occupation by any one? When was it first occupied within your knowledge, by whom, in what manner? How long did that occupation continue?

Answer. I know the Rancho La Sierra. I first came to California in 1834, and first saw the rancho in 1837. It was then occupied by Thomas and Bernardo Yorba, who had houses on it occupied by their servants, and had cattle there, and they occupied it together until the death of Thomas in 1845, and on his death the land was divided between his heirs and Bernardo. The land granted to Bernardo has been occupied by him ever since the grant. The land was divided, on the application to the governor by the heirs of Thomas and by Bernardo, by his granting seperate portions of the land to each, since which they have occupied the seperate portions according to their grants.

YGN'O F. CORONEL.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Oct. 15th, 1852.

GEO. FISHER, *Secretary.*

Depo. of Abel Stearns.

9 OFFICE OF THE U. S. LAND COMMISSION, LOS ANGELES.

On the 19th day of October, 1852, before me, Hiland Hall, one of the commissioners for ascertaining and settling private land claims in California, personally appeared Abel Stearns, a witness produced in behalf of Bernardo Yorba, claimant of La Sierra, in the case which is No. 382 on the docket of said commissioners, who, having been duly sworn, testified as follows:

The associate law agent was present.

Question first. What is your name, age, where do you reside? If in California, how long have you resided here?

Answer. My name is Abel Stearns; my age, fifty-four years; and I reside in Los Angeles. I have resided in California for the last twenty-three years.

In answer to questions by the counsel for the claimant the witness further testified as follows:

I am acquainted with the rancho called Sierra; it is situated on the southeast side of the river Santa Ana, in the county of Los Angeles; I have known the place from the year 1834 or 1835. It was occupied from that time, and I believe previously, by Tomas and Bernardo Yorba, with cattle and other stock. Their residence was not on the land; it was grazing land, and for the keeping of stock. The occupation has been continued in the family to the present
10 time. The Rancho Sierra, of which I am speaking, embraces a larger tract, of which I understand Bernardo Yorba occupies and claims but a part. I have always understood that the rancho had been occupied by the father of Tomas and Bernardo Yorba, before I knew it, and that it had been long in the possession of the family. There is a small house on the lower part of the rancho, which must have been built as early as 1844, or earlier, as I think.

ABEL STEARNS.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Oct. 19th, 1852.

GEO. FISHER, *Sec'y.*

Depo. of José Antonio Carrillo.

11 OFFICE OF THE U. S. LAND COMMISSION,
Los Angeles, Oct. 20th, 1852.

On this day, before Hiland Hall, one of the commissioners for ascertaining and settling private land claims in California, came José Antonio Carrillo, a witness produced in behalf of the claimant, Bernardo Yorba, whose petition is No. 382 on the docket of the commissioners, and was duly sworn; his evidence, being given in Spanish, was interpreted by the secretary.

The U. S. law agent was notified, and attended.

In answer to questions by counsel for the claimant the witness testified as follows :

My name is José Antonio Carrillo; my age, fifty-seven years; and I reside in Los Angeles, and am a native of California.

I am acquainted with the Rancho La Sierra; it is situated on the river Santa Ana, in the county of Los Angeles. Bernardo Yorba has occupied it ever since the year 1833. It had been previously occupied by Antonio Yorba, the father of Bernardo, from the year 1810, in company with the Peraltas.

In answer to questions by the associate law agent witness says that the Peraltas did claim a portion of the land, but that Yorba and they had a settlement of the matter and divided the land be-
12 tween them, leaving the lines now claimed by Bernardo as belonging entirely to him. The witness knows of no adverse claim to the land.

JOSÉ ANTONIO CARRILLO.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office October 20th, 1852.

GEO. FISHER, *Sec'y.*

Depo. of B. D. Wilson.

13 OFFICE OF THE U. S. LAND COMMISSIONERS,
Los Angeles, October 22d, 1852.

On this day, before Hiland Hall, one of the commissioners for ascertaining and settling private land claims in California, came B. D. Wilson, a witness in behalf of the claimant, B. Yorba, whose petition is No. 382 on the docket of the board, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was notified, and attended.

In answer to questions by counsel for the claimant the witness testified as follows:

My name is Benjamin D. Wilson; my age is forty years; I reside in the city of Los Angeles, and have lived in California ever since the year 1841.

I know the rancho called La Sierra; it is situated in this county, some forty miles from this place, in a southeasterly direction, on the river Santa Ana. I think I first saw the rancho in 1843; at that time it was occupied by Bernardo Yorba and Thomas Yorba. It was occupied by them together until the death of Thomas Yorba, in 1844 or 1845. In 1846 the widow and heirs of Thomas Yorba agreed with Bernardo Yorba on a division of the land between them, and each party then petitioned the governor for grants, and he sanctioned the division by granting to each of the two parties the distinct portions of the land they respectively petitioned for. The lower por-

14 tion of the said rancho contained the house and lands which Bernardo took in the division, and that portion retained the name of La Sierra; since the division the widow has built a house and land on her part, and Bernardo has occupied his part seperately for her. The old house, on the lower part of the rancho, was there when I first knew the land. It was inhabited, and has been ever since.

The name of the widow of Thomas Yorba was Vicenta Sepulveda.

B. D. WILSON.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office October 22d, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Leonardo Cota.

15 Los Angeles, *October 25th*, 1852.

On this day, before Hiland Hall, came Leonardo Cota, a witness in behalf of the claimant Bernardo, petition No. 382, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to questions by counsel for the claimant the witness testified as follows:

My name is Leonardo Cota; my age is thirty-four years; and I reside in Los Angeles, and am a native of California.

A paper is now shown me, purporting to be proceedings of juridical possession given to Bernardo Yorba, of a place called La Sierra, 18th of July, 1846. My genuine signature is attached to said paper. I was acting as alcalde at the time, and gave the judicial possession, as stated in said paper. There were two alcaldes; and when there was a temporary vacancy the regidor he filled the vacancy for the time being, being authorized by law to do.

In this case the first alcalde was abroad, and the second a relative of the party, and by law incompetent. I was therefore appointed. Said paper is marked Exhibit A, and annexed to the deposition of Ignacio F. Coronel.

LEONARDO COTA.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office October 25th, 1852.

GEO. FISHER, *Secretary.*

16 (Here follows map, marked original, page 17.)

18 1845.

Espediente promovido por Don Bernardo Yorba enputencion del terreno llamado la sierra. No. 543.

Angeles,
Octubre 23 de 1845.
Pare lete instancia al July 1° de esta capital paraque proctique los informes que sean necesarios y vintoo al Gobrimo paia resolucion.
PICO.

Ex'mo S'or Gobernador: Bernardo Yorba dueño del rancho Sn. Automo en el rio de Santa Ana y de la recindad de esta cuidad ante V. E. couel debido respecto y legun derecho me presento y digo, que habinedo poseido hace mas de venite años un parage llamado de la sierra sobre el mismo rio altro, fue ocupado chelamente con las bienes delfruado me hermano D'n Tomas Yorba, en los higos en cuya unicon mas mantis-vimos en buena armonia, mas hoy comalos bienes del altro fruado pasan á otres manos me es conviminte pedir la division del terreno que en el espresado parage de la sierra y ponlotanto nohabiendo obtenido titulo en forma segun han prevenido leyes portenores aquel entonees elevo lopresente esperando que V. E. se sirva letendro me el correspondiente al diceño que tenge el honor de acompañar cuya estencion es comode cuatro leguas por lo que, A. V. E., pido suplico me conceda esta solicitud por ser de necesidad y justicia; cuya gracia imploro protestando lo necesario y esperando se sirva, V. E., admitér la presente en este papel comun por falta del sellado correspondiente.

Angeles, Octubre 18 de 1845.

BERNARDO YORBA.

19 Angeles, *Obre* 24 *de* 1845.

En cumplimiento del superior decreto marginal al Ex'mo S'or Gobernador que obra en la antecedente instancia, pasese por mas declaracion a examinar el terreno que solicita al interesado, previa citacion de colindantes y demas diligencias respectivos asi yo vicente Sanchez, alcalde primero constitucional las dereti mandi y firme con los de mi asistencia segundio.

A. F. CORONEL.

Victor Sanchez, *Assa.*
Felipe Carrildo, *Assa.*

Ang's 29 *de Octubre de* 1845.

En la fha. se nombro a las senores regidor Don Luis Jordan y sindico procurador D. Bacilio Valdez, para que hagan la veduria del terreno que hace mencion el solicitante; previas los requisitos de estelo y conforme al deseño. Lo que haciento por diligencia que antoneo y firme con los de assa, segundio.

JOSE MARIA MORCUO.

V'T'R Sanchez, *Assa.*
A. F. Coronel, *Assa.*

ANGELES, *Obre* 30 *de* 1845.

Se entrega el yresente espediente a la comicion nombrada con tres fojas utiles.

SANCHEZ.
SOR. JUEZ, 1o.

{ Comiscion de } { Ayuntamto. }

Concermente al oficio de V. fecha 29, del po. pdo. en ql. in dere. pare hacer la vedurin del terreno que solicito (titulo) Dr. Fernando Yorba, convincio a V. que hemos estado. Yo el Sor. Dn. Bacileo Valdez haser la referida examinacion y veduria, del sitio para la cual q. podulo verificar mandamos citar á los calindantes q. V. mi dizo henar a pesar de no ser lo mas que la Sna. Dn. Vicenta Sepulveda per-
20 varer sin embargo delso, para cumplir los maudé citar, y no comparecio niugemo, y biendo llo-elloy que el maro que fire con las citas dize que no estabaro hoy ningemo mas que la Sña. Vicenta y estando mande decir que en apoderado uo estaba hay y que no tenia à quim mandarlos fuimos hacer la bedurin y examinar el terreno el cual dizo a V. que es conforme al deseño que se presente que no es de particular nengimo, ni comunidad.

Leso que es uncainente unterreno, que hace mas de veinte anos que los poseé de Sor Dn. Bernardo y. D. Tamas Yorba (finado) mas el que solicitá dho Sor Don Bernando no estesto el terreno. Surrá es mas que una parte del pocó mas ó menos.

Es cuanto tenemos que poneula conversento de v. paen los fines que le com leuzan esta vez propocionara la ocasion de ofrecer los segusidades de nuestras ápreciar.

Diex y Libertad.

SAN ANTONIO, *Obre* 1o *de* 1845.

LUIS JORDAN BAEILIO VALOLEZ.

ANGELES, *Oct.* 27, *de* 1845. Pare la presente salicitad al Juez, 1o de cita capital y que y hoy que este al espediente de Don Bernando Yuba para que conteste al contemdo de el la y vol ben al Gabn. para resolver.

PICO.

Viceunta Sepulueda Vinda del feuádo D. Tomas Yorba y Mexicano por naciento ante v. z por el ocuesa legal y en la mas bastante forma compareseo y digo; que tengo noticiá que mi her mano politico D. Bernando Yorba, pidio por una instancia dirijiada à esa superioridad la division formal de los ranchos de Santa Ana q. Ann pide que se le agraein, counterreno anexo al rancho de Santa
21 Ana cunmedeo: esta nateun y es de sututora de las menores hijos mios y del finado Don Tomas Yorba me exigen duigenne a v. e. y manifestar le que al dividir este terreno bajo al pio que hoy sehalla seran nada menos que examinar á mi familia ponge el sitér que paseo la el mas pequeno de los Santa Ana, luraron de que quanda se trata de la division del precetudo terreno por mi esporo eran posudor, los Yorba's del paraje mombrado de las mun y cosme el Sór Alvarado se lo concedio al Sór Don José Sapulueda, que de memos enbadod rancho que urumsesteó una cortedad absoluta y nada benificio á la

familia mia mas que no resultem ni la familia D Bernando Yorba por que tune el Cajon de Santa Ana ni la de Don José A. Yorba por el doncho que dejo fundado en las balsas como repacionara de Dn. Catarina Duiz peio Sr. V. E. como le necesario la subordinacion de estos sitios que se haga con arreglo á deucho disputando todo con ignales benficios en los terrenos pastos abrevaden y Aguaje y de ninguna mauera se pudun permetár que una persona se bénficio y las demas se daum. Por tanto A V. E. suplieo que en vesta de la espunto maudé se agreque esta instancin a la que presente D. Bernardo Yorba y pido setenga presente al trempo de resolver al negocio justecia que de V. E. espeso en lo que recibire gracia. Imo no ser de malicia y lo necesario D. Sabiendore admtir la presente en papal comun por falta de Sellado respective.

Angeles, *Octobre* 24 *de* 1845. Non firmar.

22 Angeles, *Octobre de* 1845.

En complimiento del superior decreto marginal hazure saber la antecedente solicitud al Sor. Bernardo Yorba por que conste al contiendo de ella, y Azreguese al Espediente de Sor comalo dispone el Exmo. Sor Ase Yo Vicente Sanchez Alcalde 1o. instana. decreté mandi y firmé con los mis assa, segun derecho.

JOSÉ MARTENO MORENO.

Vicenti Sanchez, *Assa.*
A. F. Coronel, *Assa.*

Angeles, *O'bre de* 1845.

En la fha se presonto Don Bernardo Yorba y se de notifico lo antecedente lo impuesto digo se lo entregara el espediente por sinco dias para que contesto á la instancia de Dona Vicenta Sepulveda, esto contesto y firmé conmizo y los de assa segun derecho.

VT'E SANCHEZ.
BERNARDO YERBA, *Assa.*

A. P. Coronel, *Assa.*
Luis Jordan.

En la fha. se le entiegó el espediente al Sor Don Bernardo Yorba por disco dias en sus fogas utiles.

Sor Juez de primera instancia de la luidad y su demarcacion :

Bernardo Yorba ante al tribunal de V. E. en toda forma y segun derecho me corresponde diego ; que habiendome echo cargo de la representacion que hizo gobierno Dn. Vicenta Sepulceda venda de mi fruado Hermano Tomas, y del decreto que acompaña a continuacion de verra v. cepedio por el que pasa por el termeno de cineo dias a me poder para contestar, lo hazo con la debido respecto y espougo;

que parese que decho Sor. el quiroze su consepto, pues mi
23 primera peticion quedere almiemo gobno. no hablare particion de terrenos si no solicitud del titulo por que no lo hay en formado una parte del paragne mis espresardo hermano y yo ocupamos por espacio de venite anos en la Sierra y esta en nado tieno concesion con el roncho decta. ana que a todos los hermanos nos corres-

ponde por herencia si a la respectida Sra. Dna. Vicente no le convine suplicar por las leyes no les cutad de los terrenos que ocupa, ami si y pr. esta razon enesta no implora al superior gobierno nu de el titulo correspondiente segun el deseño que corre en el espediente. No esto no les resulto daño miguero a los herederos a Sta. Ana, ni à lo repitida Señora puerto que lo que pretende es obtener el documento q. haga legal la posecion por eesefirlo asi la ley, y, no puedo menos de conferas que si hasta ahora, la confraizn reposeaba en mi desaida, q. de so advertir lo y no esponer mi ocupacion de tantos años, a las vicisitudes de los tiempos venideros.

Ahora con respecto al parage decta aña y que la dha senora prorere asumto sobre el diego, qae pido ia division como parte mi herencia y a por que es muy necesario con mis intereses y ya pr. que coma losa heredada dehe reconocer como lezitima á mis subsesores tal como es por lo que conviene dha. particion; la Sra. Dona. Vicente Sepulveda alz'r de perjucio se sehace. Yr. ignoro las razones por que se perjudica pues veo lo contrario y conoco que resulta para todas el beneficio de saber lo que a cada uno esclusivamente pertenerca,
mas suposiendo siu eonseater que ella se perjudicaire ó caso y
24 derebuva sujetar á sufrir uno mal, por la presensions de que
a ella le produsca a bien? No señor ni la sñ. ni yo y azregueso que ni los demas herederos nos gravamen en nada, y tan lejos estoy de crurdo, como conciento de ser util el verificarlo. Por lo dicho espero de V. sc serva mando haser la particion del rancho de Sta. Ana por su conforme á derecho y a la autoridad de la ley, como parde vee se si si se comuerten con las sabios publenetos que todos en ello convienen, no obstante esto, sui este recurso, bastar o las da luz de la razon para convenur y renidos los hombres en sociedad, esta garantiza lo lntereses particulares de cador sitio y no se conseguira sufen, si cualguira quesde se impedir el libre un, aprovachean'te y conosimiente de los que posee de Sta. Ana pertenece ó varios y ana como de ellos, mas como hasta ahora no estar devermusada la parte vuelva á repitir que no conviene la particion alozando en mi fabor el derecho que lo ley que lo dispone por lo que cumpliendo con lo dispuento pr. el tribunal del. en su decreto a fojas 6. A. V. E. Rido y suplico hazo como lleno dicho por sur de justicia, juro lo necesario y que espero me permitera V. el uso del papel comun pr. falta del sellardo que corresponde.

S. Antonio, y Enero 3 de 1846.

BERNARDO YORBA.

Exmo. Sor: Tengo el favor deponer en Manos de V. E. en ocho fojas el espediente promovido por el Sor Don Bernardo Yorba, el cual yeba el informe de la concesion que hizo la veclusia del terreno
demuciado; pero la falta la precisa comparacisra de las colin-
25 dantes y demas interesados para que segun algatos y escepciones la superioredad formar ser y meno inacto; mas como el tiempo corra y la parte del de D'n Bernardo Azita es preciso à elevar la à V. E. pasa que resolva lo que creajusto.

Ang's, En'o 5 de 1845.

JUAN GALARDA.

Angeles, Febrero 22 de 1846.—Vuelva esto espediente al acalde 1° de este capital, para que convesta del diseño sehaga nueva veduira del terreno que pretende titulo Don Bernardo Yorba Hammado, y mas con exactitud todo el que solicitante y su finado hermano ocupabourg en que estencion à fin de evacuados el informe corresponde'te con la claridad que es necesaria se sepa la cuandos sitios con esta todo el referido terreno y queda revalverse con propriedad lo que fuere juto.

PICO.

Angeles, Febrero 27 de 1846.—Hallandose este jusgado congrava ocupacion se lieve prude este misjores.

Angeles, Marzo 27 de 1846.—Hallandose desocupado este jusgado nombren lu comicion à Don Antonio Coronel y al ecladar Don Luis Lopez, los que sean haran la redusia ale la manera que lo ordenen la super omita y dara lu cuesta por esento, à cuyo efecto apecieron à Coronel y Lopez, y que puclava la à la boudad paside, año yo Juan Gallardo, alcalde, y Juez de 1a. sustanciá decreté mandé con los de asistucia.

Seglur drecho.

JUAN GALLARDO.

Assa: Y'go Coronel.
Leonardo Cota.

Enlafecha sepaso officio respectivo:

26 Exmo. Señor: Concerniente al superior decreto marginal fha 22 de Febrero ultimo. Nombre data comision que hiciere nueve veduria de la sierra que solicita Don Bernardo Yorba en el piento de Santa Ana y que esta misma comision lo dado cuento con sus trabajos y pone el officio que va à continuacion con cuyo documento podra resolver la superioredad lo que creo justa y convemente. En lo que tenga el honor de elevar à V. E. lu complimiente del presentado decreto.

Ang's, Abril 1°, 1846.

JUAN GALLARDO.

Complimiendo con lo que de me ordena, en suarota 29 del pa. pro. pusé acompañado del citado Don José Maria Lopez, y del Sor. Don Bernardo Yorba al paraye llamado de la Sierra en el Rio de Santa Ana solicitado por el segunda como igualm'te à la parte sobrante que queda de este mismo terreno al N. E. y teniendo à la vista el superior decreto 22 al Febrero que obra en el espediente del referido Sor. Yorba f. 8. o. vaelta 3 frenta como el deceño que anota à la 2 del mismo y demus documentos concermentes, procedo escrugralamete haceda veduria respectiva del mencionado parayé, observando todo las diligencias y reserbas y necesarios à la materia y en consecuencia resulta que altro terreno compiende en su estencion sute citios mas ó menos de y anado major que esta ocupado hace mas de veinte años con bienes de los Sor. Bernardo Yorba y el finado su hermano Don Tomas que la parte que pide el solicitante es la mejor por sus tierras

de labor, pastos y abrevederos y que altro citio se paya un corral perteneciente al finado Don Tomas y un facal halstado con las
27 serbientes de la vinda de esto veñor igualm'te hize el entyo del divend que hecho referencia con el punto solicitado y resulta, que anuque es la mismo en su forma demuestran los bientos por lo malfigurados en cun opocision ó las fisis. Al hacer presente à la Señora Doña Vicenta Sepulveda el objeto de mi comision me ha manifestado; 1° que el Sor. Don Bernardo Yorba groderando la ocasion de tener à su cargo los intereses de mi finado esposa Don Tomas, à pedido la parte mejor del terreno de la sierra con quien peynicio el los neuores por quien representa y mi considerar el igual ó mas derecho que estos tienen como lo ha echo vez al exmo. sor. por representacion todo lo quetengo el honor de informar à V. obre quiendo la superior dispocicion y para los efectos que haya sacar adjustandale el espediente fho, Protestando à la vez mi aprecio y consideracion.

Dios y Libertad. Ang's, Abril 3 de 1846.

A. F. CORONEL.
JOSÉ MARIA LOPEZ.

Sor. Juez, 1°.
Dn. Juan Gallarde.

Pio Pico, gobernador constitutional del departamento de los Californias:

Por cuanto el cuididano Bernardo Yorba ha pretendido para su benificio personal zel de su familia interresso que por largas años ha estado prosequido legalmente llamado de la sierra en las margenes del Rio de Santa Ana colinolante al norte con la sierra y al sur con el mismo rio; practicados previamente las diligencias y anereguaciones concermentes, usanda de las facultades que meson conferidas
28 à nombre de la nacion Mejicana he venido por decreto de este dia en concederle el espresado terreno declarandole la propriedad de el por las presentes letras de conformidad con la ley de 18 de Agosto de 1824, y reglamentos de 21 de Noviembre del 1828, à reserva de la aprovacion de la Exma. A. Departamental y baja las condiciones siginentes.

1°. Podra cercarlo sin perjudicar las travesias, caminos, y servidumbres, lo disputaran libre y exclusivamente destinandolo lo al uso ó cultivo que mas le convenza.

2°. Solicitará del juez respectivo que le de la poseson juridica en virtud de este despacho, por el cual se demarcaran los linderos con las majoneras necesarios.

3°. El terreno de que se hace donacion es elde cuatro sitios deganado mayor. El juez que diese la posecion lohare medir conforme ó ordenanza, quedando el sobrante que resulte á la nacion para los usos convenientes. En consequencia mando que teniendose el presente titulo por firme y valedero se tome razon de il en el libro respectivo y se entregue al intersado para su resguardo y demas fines.

Dado en la cuidad de los Angeles en este papel comun por no haber del sellado á quince de Junio de mil ochocientos cuarenta y seis.

PIO PICO.

Por cuanto Dona Vicente Sepulveda ha pretendido para su beneficio personal y el de su familia la parte de un terreno por largos años estado porecido legalmente su depuesto es para D. Tomas
29 Yerba llamadala sierra, en las margenes del Rio de Santa Ana, colmd'te con el Rio de Santa Ana, colmdante el Dn. Bernardo Yerba, y la misma sierra, practicadas previamente las diligencias y averiguaciones concernientes, usando de las facultades que me son conferidas á nombre de la nacion Mejicana he venido por decreto de este dia en concederle el espresado terreno declarando la propriedad de el por las presentes letras de conformidad con la ley de 18 de 1824, y reglamentos de 21 de Noviembre de 1828, á reserva de la aprovacion de la E. A. departmental y vajo las condiciones siguientes.

1°. Podra sercarlo sin perjudicar las travecias caminos y servidumbres, lo disputaran libre y exclusivamente, destinandolo al uso ó cultivo que mas le acomode.

2°. Solicitará del Juez respectivo le de la posesion juridica la virtud de este despacho, por el cual se demarcaran los linderos que las mojoneras necesarios.

3ª. El terreno de que se le hace donacion es de cuatro citis de ganado mayor. El juez que diere la posecion lo hace media conforme á ordenanza, que dando el sobrante que resulte á la nacion para los usos combrenentes. En consequencia mando que servémdore el presente titulo por firmé y valedero se tome razon de il en el libro respectivo y se entregue al interesada para su resguardo y demas fines.

Dado en la cuidad de los Angeles en este papel comun por
30 fatla del sellado á quince de Junio de mil ochocientos cuarenta y seis seis.

Y pilmenden á la intersada que el compaño el de aur respectivo.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such having in my office and under my custody a portion of the archives of the former Spanish and Mexican Territory or department of Upper California, under and by virtue of the second section of the act of Congress approved on the 3d day of March, 1853, providing for the survey of the public lands in California, and for other purposes, do hereby certify that the twenty preceeding and hereunto annexed pages of tracing paper, numbered from 1 to 26 inclusive, exhibit a true and accurate copy of a certain document on file and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially and affixed my private seal, in lieu of the seal of office, which has not yet been received, at the city of San F'co, Cal., this 7th day of July, 1853.

SAMUEL D. KING,
Survey. Gen'l, Cal'a.

Filed in office Sep. 23, 1852.

GEO. FISHER, *Secretary.*

32 *Posecion de la Sierra à D. Bernardo Yorba, año de* 1846.

PIO PICO, GOBERNADOR CONSTITUCIONAL DEL DEPARTMENTE DE LOS CALIFORNIAS:

Por cuanto el cuidadano Bernardo Yorba, Sen., pretendido para su beneficio personal y el de su familia un terreno que por largos años ha esta da poreyenda legalmente llmado de la Sierra en los margures del Rio de Santa Ana colindante con el misma dio y el rancho del Qemaseal; practicadas previamente los diligencias y averiguaciones consernientes usando de los facultades que me son conferidos à nombre de la nacion Mejicano he venido por decreto de este dio en concederle el espresado terreno de clarando le la propiedad de el las presentes letras de conformidad con la ley de 18 de *de* Agorto, de 1824, y reglamentos de 21 de Novembre, de 1828, a reserva de la aprobacion de la Exma Asamblea departmental y bajo las condiciones siguientes.

1o. Podra circarlo sea perjudicai las travesias caminas y servidumbres lo disputaran libre y esclusivamente destinandalo al uso y cultivo que mas le convenga.

2o. Solicitára del juez respectivo le de la posecion juridica en virtud de este despacho por el cual se demarcaran los linderos con los mojoneras necesarias.

3o. El terreno de que se le hace donacion es de cuatro sitios de ganado magor.

El juez que diere la posecion lo hará medir conforme á orde-
33 nanza quedando el sobrante se resulta a la nacion para los usos que sean convementes.

En consecuencia mando que teniendore el presente titulo por pime y valedero se tomi de el razon en el libro respectivo y se entregue al interesado para su resguardo y demas fines. Dado en la cuidad de los Angeles en este papel comun por falra del sellado à quince de Junio, de mil ochocientos cuarenta y seis.

PIO PICO.
JOSÉ MATIAS MORENO,
S'rio Inte'n.

Queda tomada razon de este superior despacho en el libro respectivo. Fecha ut supin.

MORENO.

En la cuidad de los Angeles del departam'te de California à los ocho dias del mes de Julo de mil ochocientos cuarenta y seis, anuento à la solicitud verbal cue hize Don Bernardo Yorba para que se le diere posesion juridica de un paraje llmado la Sierra de los margenes del rio de Santa Ana concedido por el exmo. Señor Gobernador segun lo demuestra el titulo que presento en el aeto pasese por mi y testigos de assistencia al parage que se indica y previa citacion de colindantes drocedase a dar esa posesion con total arreglo el titulo que de fecha de quince de Junio ultimo, ase yo Fernando Cota, regidor de cum del

illustre ayuntam'to, alcalde primero y juez de primera instancia intesino decreté mandé y firmi con los de mi assistencia segun derecho en este papel comun por no haber del sellado, doy feé.

FERNANDO COTA.

Asistencia: YGNACIO PALOMARES.
34 As't'a: JUAN FOSTER.

En seguiola pasi oficio à los señores colindantes manifestando les que iba á remedir la sierra de los margenes del Rio de Santa Ana y poner en posecion de ella, al Señor Don Bernardo Yorba, por lo que se les prevcnia estuviesen en sus linderos; estas senores no manifestaron objeccion alguna y quedaron entendidos lo que se pone por diligencia.

LEONARDO COTA.

As'a : YGNACIO PALOMARES.
As'a : JUAN FOSTER.

A continuacion y hallandome en esta ciudad se buscaron cabal gaduras para salir y habiendore conseguido se empendio la marcha y sepone por constancia Cota. En nueve de Julio del mismo año y estando yo en la Sierra de los Margenes del Rio de Santa Ana nombré dos oficiales cordeleros que la fueron Ygnacio Sepularda y Gabriel Garcia los que por no saber escribed se omiten sus firmes, estos oficiales aceptaron y bajo de estilo afrecieron desempeñar fiel y legalmente su encargo y cumplir con el caracter de tales cordeleros lo que asiento por diligencia que autorize y firme con los de asistencia segun derecho Leonardo Cota; asistencia. Ygnacio Palomores; assis'a, Juan Fortu.

Acto contumo y permanente en la sierra estando ante mi los oficiales cordeleros y testigos de assa. hize medir un cordel constante de cien varas el que se mando atum á sus estremos unos sancos de madern y previa observacion y calculo por mi disposicion se tiro el cordel primero desde una lomita que es lindero del Cajon de San Antonio con direccion al este y se contaron alli mil seis cientos varas
35 que remataron en una Cañada Corte de en seguida se tiro el cordel con direcion al norte 45° grados al este y se contaron y medieron siete mil quinientos varas que remataron en la orilla del rio Junto de la toma cercada a una Monte de Sans y se mandó poner alli una mojonera, de aqui y con direccion el sur 60° grados al este se contaron once mil quinientos varas que remataron al pie de la sierra donde hay unos en cinos lo que estan en el lindero del mismo temascal, dondé se mando poner una mójonera. De alli y con direccion al oriente se contaron y midieron trece mil varas que remataron en la misma lomita donde se comenzo; habiendo comparecido los lalindantes en sus respectivos puntos sin manifestar objeccion alguna, concluidas las medidas se dé posecion solemne y juridica del terreno á nombre de la nacion Mejicana al Señor Dn. Bernardo Yorba y quedo satisfecho y terminado el acto lo que autorizo y firmo con los de asistencia segun derecho, Leonardo Cota; asistencia, Ygnacio Palomares; assa. Juan Fsoter; Angeles, Julio diez de mil ochocientos

cuarenta y seis, Dude testimonio al Señor Bernardo Yorba de los presentes obligaciones para que agregando los al titulo se servan de constancia y seguridad, asi yo el juez autorizo decreté y mandé con los de asistencia segun, Leonardo Cota; asistincia, Ygnacio Palomares; assa., Juan Foster; en seguida se dio el testimonio respectivo tachado asi no vale. Concuerdo con su original a que un remite y
36 se haya en el protocolo de cite uña del que se saco corigio y confronte en utos dos fojas de papel comun por falta del sellado, doy feé.

LEONARDO COTA.

Assa.: YGNACIO CORONEL.
Assa.: JULIAN CHAVES.

Filed in office Octo. 15th, 1852.

GEO. FISHER, *Secretary.*

38 *Translation of espediente.*

1845.—Espediente instituted by Dn. Bernardo Yorba, applying for the land called La Sierra.—No. 543.

To his excellency the governor:

I, Bernardo Yorba, owner of the rancho Sn. Antonio, on the Sta. Ana river, and residing in this city, present myself before your excellency, with proper respect and according to law, and say that for more than twenty years I have possessed a place called La Sierra, upon said river, which was occupied jointly with the cattle of my deceased brother, Thomas Yorba, and my own, which union we maintained in perfect harmony, but that now the cattle of the said deceased have passed into other hands, it is convenient for me to ask a division of the lands of the said place La Sierra; and inasmuch as no formal title, such as the laws required, has been obtained, I present this, hoping that your excellency will be pleased to grant me a title corresponding to the map which I have the honor to submit, the extent being about four leagues; wherefore I beseech your excellency to grant this, my petition, because of its necessity and justice. I implore this concession, and declare, &c., as required, &c., hoping that your excellency will receive this on common paper, for want of sealed paper of the proper kind.

Angeles, October 18th, 1843.

BERNARDO YORBA.

39 *On the margin of the above.*

ANGELES, *October 23rd*, 1845.

Let this application be passed to the 1st judge of this capital, that he may make the necessary inquiries and return it to this gov't for decision.

PICO.

[Here follows a map.]

ANGELES, *Ootober 24th*, 1845.

In fullfilment of the superior marginal decree of his excellency the governor, which appears on the pending petition, for further information, let proceedings be taken to examine the land which the party solicits, the adjoining land-owners being first cited and other proper steps taken. Thus I, Vicente Sanchez, first constitutional alcalde, decreed, ordered, and signed, with my assisting witnesses, according to law.

V'TE SANCHEZ.

Ass't'g witness : A. F. CORONEL.
Ass't'g witness : FELIPE CASTILLO.

ANGELES, *October 29th*, 1845.

On this day the regidor, Dn. Luis Jordan, and syndico, Dn. Vacilio Valdez, were appointed to make the examination of the land mentioned by the petitioner according to the requisites of the law, and in conformity to the map which I noted as come of proceedings, and I authorized and signed, with my assisting witnesses, according to law.

V'TE SANCHEZ.

Ass't'g witness : A. F. CORONEL.
Ass't'g witness : JOSÉ MATIAS MORENO.

40 ANGELES, *October 30th*, 1845.

This espediente, on three leaves, was delivered to the commission named.

SANCHEZ.

Commission of the ayuntamiento.

To the 1st judge :

In pursuance of your official note of the 29th of last month, in which you ordered me to make an examination of the land, the title to which is solicited by Dn. Bernardo Yorba, I inform you that I and Dn. Bacilio Valdez went to make the said examination and inspection of the place, for which purpose, and in order to effect it, we summoned adjoining owners, as you directed, though there is only one, Doña Vicente Sepulveda ; still, to comply with your order, I directed citation, but no one appeared. Seeing this, and the young men who went with the citations saying that there was no one there but Dona Vicente, and that she sent word that her agent was not there, and that she had no one to send, we went to make the inspection and examine the land, which I report to you is according to the map presented, does not belong to any individual or community, but is a place of land which Bernardo and Don Tomas Yorba (deceased) have possessed for more than twenty years. That which Don Bernardo solicits is not the whole tract, but a considerable portion of it.

This is all we have to bring to your knowledge for such purposes

as it may be proper. We take advantage of the occasion to
41 assure you of our most distinguished consideration. God and liberty.

San Antonio, Nov. 1st, 1845.

LUIS JORDAN.
BACILIO VALDEZ.

To his excellency, the governor:

I, Vicente Sepulveda, widow of the late Dn. Tomas Yorba, and a Mexican by birth, in the best form of law appear before your excellency and say that I am informed that my brother-in-law, Dn. Bernardo Yorba, by a petition addressed to the sup'or authority, has asked for a formal division of the rancho of Santa Ana, and, further, a half of a tract of land adjacent to said rancho. This notice, and my being tutrix of the minor children of the late Dn. Tomas Yorba and myself, compel me to apply to your excellency, and to show to you that to divide the land as it now is will be nothing less than to ruin my family, because the place which I occupy is the smallest of the Santa Ana, because when my late husband, in his lifetime, tried to make the partition of the land the Yorbas were in possession of the place named Las Sierras, "and as Alvarado granted it to Dn. José Sepulveda, the rancho is diminished and reduced to a very small extent, and is of no service to my family, but it will not prejudice the family of Dn. Bernardo Yorba, for he has the cajon de S'ta Ana, nor that of Dn. José A. Yorba, because of the right which he has established in Las Bolmas, in the place of D'na Catarina Ruiz; but if your excellency
42 thinks the subdivision of these places necessary, let it be made according to law, all enjoying equal benefits in the land, grazing, and springs, so that it shall not be permitted that one person shall be benefitted and the other injured.

Wherefore I beseech your excellency that, in view of what is said, this petition may be united to that which Dn. Bernardo Yorba presented, and I ask that it may be considered when this matter is determined, a justice which I hope, your excellency, and of which I shall receive favor. I swear that this is not done maliciously, &c., praying that this may be received on common paper, for want of sealed.

Angeles, October 27th, 1845.

(Not signed.)

ANGELES, *October* 27*th*, 1845.

Let this application be handed to the 1st judge of this capital and attach this to the espediente of Dn. Bernardo Yorba, that he may reply to its contents and return it to the government for a decision.

ANGELES, *October* 28, 1845.

In fullfilment of the superior marginal decree, make known the foregoing application to Dn. Bernardo Yorba, that he may reply to its contents and attach it to his espediente, as his excellency orders.

Thus I, Vicente Sanchez, 1st alcalde and judge of 1st instance, decreed, ordered, and signed, with the assisting witnesses, according to law.

VICENTE SANCHEZ.

Assisting: A. F. Coronel.
Assisting: José Matias Moreno.

43 Angeles, *October* 30*th*, 1845.

On this day Dn. Bernardo Yorba presented himself, and, being informed of the foregoing, he asked that the espediente be delivered to him for five days, that he might reply to the application of Doña Vicenta Sepulveda. This was his answer, and he signed this with me and the assisting witnesses, according to law.

VTE. SANCHEZ.
BERNARDO YORBA.

Assa: A. F. Coronel.
Assa: Luis Jordan.

On the same day the espediente was delivered to Dn. Bernardo Yorba for 5 days upon six sheets.

(Rubric.)

To the judge of the 1*st instance of the city and its vicinity:*

I, Bernardo Yorba, appear before your tribunal in all form of law and say that I have received the representation of the supreme government, made by Dña. Vicenta Sepulveda, widow of my deceased brother Thomas, and the decree in continuation which you saw fit to issue, and by which it was delivered to me for five days to reply. I now do so with proper respect, and represent that it appears that the said Vicenta Sepulveda misapprehends the matter, since my first petition, which I presented to the government, did not speak of a partition of lands, but was an application for a title, because there is no formal one of a part of the place which my said brother and I have occupied for a period of twenty years in the Sierra, and this
44 has no connection whatever with the rancho of Sta. Ana, which belongs to all the brothers by inheritance. If the said Dña. Vicente does not think proper to ask to be second in the land she occupies, I do, and for this reason I insist on imploring the supreme government to give me the corresponding title according to the map contained in the espediente. From this results no injury to the heirs of Sta. Ana nor to the said Señora, since what I ask to obtain is the document required by law to make the possession legal; and I cannot do less than confess that if till now confidence rested in my carelessness, I ought now to procure it, and not expose my occupation of so many years to the chance of future times.

Now, in regard to the place of Sta. Ana, since the said Señora brought the matter forward, I say that I ask the division as a partition of an inheritance, as well because it is very necessary for my interest as because a thing inherited ought to be known as a portion to my successors, such as it is. Therefore said partition is required.

Dña. Vicente alleges an injury if the division is made. I do not know the reasons why it can injure, since I see the contrary, and know that these results for all the benefit of knowing what belongs exclusively to each. But supposing, without admitting it, that she will be injured, should I be subjected to suffer one evil for a presumption that it may produce her a benefit? No. Neither she, nor I, nor the other heirs, I am sure, will be injured in any way. I am as far from believing this as I am convinced that it is useful to make
45 it. For what is said I hope you will be pleased to order partition to be made of the rancho of Sta. Ana, it being in conformity to right and to the authority of the law, as may be seen by consulting the wise jurists who will agree upon it. Nevertheless, without this reference, the light of reason alone suffices to convince us that society uniting men guarantys the particular interests of each, and would not attain its end if any one should wish to prevent the precise improvement and knowledge of what is possessed. The land of Sta. Ana belongs to several heirs, and to me as one of them, but, as till this time the part is not determined, I again repeat that the partition suits me, urging in my favor right and the law which directs it. Wherefore, complying with what is ordered by your tribunal in its decree, on page 6, I ask and beseech that what I have said may be done. It being just, I make the necessary oath, and hope that you will permit me the use of the common paper, for want of the sealed.

S. Antonio, January 3, 1846.

BERNARDO YORBA.

EXCELLENT SIR: I have the honor to place in your hands, on eight leaves, the espediente had by Don Bernardo Yorba, which contains the report of the committee which made the examination of the land in question, but there was wanting the necessary appearance of the adjoining owners and others interested, in order that, according to what is alleged and denied, the superior authority could form
46 an exact judgment; but, as time passes, and as Don Bernardo Yorba urges, it is necessary to forward it to your excellency, in order that you may determine what you think just.

Angeles, January 5th, 1846.

JUAN GALLARDO.

{ Government of the Department of the Californias. }

ANGELES, *February* 22, 1846.

Return this espediente to the 1st alcalde of this capital, in order that, in view of the map, he make a new examination of the lands for which Don Bernardo Yorba asks a title, examining, besides, with exactness, all that which the applicant and his late brother occupied, and its extent, to the end that the corresponding report being completed with the clearness which is necessary, it may be known of how many leagues all the said land consists, and may be determined with propriety what is just.

PICO.

ANGELES, *February* 23*d*, 1846.

This court being occupied with important business, this matter is postponed.

(Rubric.)

ANGELES, *March* 27*th*, 1846.

This court being unoccupied, name as a commission Dn. Antonio Coronel and the overseer, Dn. José Lopez, who shall proceed to make the examination in the manner ordered by the supreme authority, and shall report in writing. For which purpose said Coronel and Lopez shall be required set out as soon as possible. Thus I, Juan Gallardo, 1st alcalde and judge of first instance, decreed and
47 ordered, with assisting witnesses, according to law.

JUAN GALLARDO.

Asst'g: YG'O CORONEL.
Asst'g: LEONARDO COTA.

On the same day was issued the proper official letter.

(Rubric.)

In accordance with the superior marginal decree of the 22d of February last, I named another commission to make a new examination of the land which Don Bernardo Yorba solicits at the place of Sta. Ana, and this new commission has made report of its labors, and presents the official letter which follows this, with which document the superior authority can determine what is just and convenient.

This is what I have the honor to say to your excellency in fulfilment of the decree before referred to.

Angeles, April 16th, 1846.

JUAN GALLARDO.

Complying with what you order me in your note of the 27th of last month, I went, accompanied by the overseer, Dn. José Maria Lopez, and by Don Bernardo Yorba, to the place called La Sierra, on the Sta. Ana river, solicited by the latter, as also to the place where the surplus land of this tract is to the NE., and having in view the superior decree of 22d of February, which is attached to the espediente of the said Yorba. at page 8 front, 9 reverse, and the map which appears at page 2 of the same, and other documents relating to the matter, I proceeded scrupulously to make the
48 proper examination of the said place, observing all the precautions necessary in the matter, and this is the result: That this land embraces in its extent seven leagues, (sitios de ganado mayor,) more or less; that it has been occupied more than twenty years with the property of Dn. Bernardo Yorba and his brother, the late Dn. Tomas; that the part which the applicant solicits is the best for its tillable lands, pasturing and watering places, and that on the said place there is a corral belonging to the late Dn. Tomas, and a hut occupied by the servants of his widow. Also I made the com-

parison between the map referred to and the place solicited, and it results that though it is the same in its form, the courses (points of the compass) being incorrectly drawn, are almost exactly opposed to their true direction.

Upon making known to Doña Vicenta Sepulveda the object of my commission, she has declared to me that Don Bernardo Yorba, taking advantage of his having in his charge the interests of her late husband, Don Tomas, has asked the best part of the land of the Sierra, to the great prejudice of the minors whom she represents, and without taking into consideration the equal or greater right which they have, as she has shown his excellency by a representation.

All of which I have the honor to report to you, in pursuance of the superior order, and for the purposes which may be proper, annexing it to the espediente, with assurances of my respect and consideration.

God and Liberty. Angeles, April 30th, 1846.

A. F. CORONEL.
JOSÉ MA. LOPEZ.

To the first Judge, Don Juan Gallardo.

49 Pio Pico, constitutional governor of the department of the Californias:

Whereas the citizen Bernardo Yorba has asked, for his personal benefit and that of his family, a tract of land which for many years he has been legally possessed of, called La Sierra, on the margin of the river Sta. Ana, bounded on the north by the sierra and on the south by said river, the proper proceedings having been first taken and inquiries made, in the exercise of the powers which are conferred on me in the name of the Mexican nation, I have, by decree of this date, granted him the said land, declaring it his property by these presents, in conformity to the law of the 18th August, 1824, and regulations of the 21st of November, 1828, reserving the approval of the excellent departmental assembly, and under the following conditions:

1st. He may enclose it without injuring the crossings, roads, and servitudes; he may enjoy it freely and exclusively, applying to it the use and cultivation which best suits him.

2d. He shall solicit the proper judge to give him the juridical possession in virtue of this decree, by whom the boundaries shall be marked out with the necessary landmarks.

3d. The land of which donation is made him is four leagues (sitios de ganado mayor.) The judge who gives the possession shall have it measured in conformity to the ordinance, the surplus thereof to remain to the nation for the uses which it may think convenient.

50 Wherefore I order that this title, being held firm and valid, be registered in the proper book and be delivered to the party interested for his protection and other purposes.

Given in the city of Los Angeles, on this common paper, there being none sealed, the 15th of June, 1846.

PIO PICO.

Whereas Doña Vicenta Sepulveda has asked, for her personal benefit and that of her family, part of a tract of land which for many years her deceased husband, Dn. Tomas Yorba, legally possessed,

called La Sierra, on the bank of the river Sta. Ana, bounded by Dn. Bernardo Yorba and the said sierra, the proper proceedings having been first taken and inquiries made, using the powers which are conferred upon me, in the name of the Mexican nation, I have, by decree of this date, granted to her the said land, declaring to her the ownership thereof by these presents, in conformity to the law of the 18th of August, 1824, and the regulations of the 21st of November, 1828, reserving to the approval of the excellent departmental assembly, and under the following conditions:

1st. She may enclose it without prejudicing the crossings, roads, and servitudes; she may enjoy it freely and exclusively, applying it to the use and cultivation which best suits her.

2d. She shall solicit the proper judge to give her juridical possession in virtue of this decree, by whom the boundaries shall be marked out with the necessary landmarks.

51 3d. The land, of which donation is made to her, is four leagues, (sitios de ganado mayor.) The judge who gives the possession shall have it measured in conformity to the ordinance, the surplus, if any, to remain to the nation for the uses which may be convenient, and shall require the party interested to present the appropriate map.

Wherefore I order that this title, being held firm and valid, be registered in the proper book, and be delivered to the party interested for her security and other purposes.

Given in the city of Los Angeles, on this common paper, for want of sealed, the 15th of June, 1846.

I certify the above to be a true and correct translation.

Office of the secretary of the commission, &c., &c., San Francisco, Feb'y 11th, 1854.

GEO. FISHER, *Secretary.*

Filed in office February 8th, 1854.

GEO. FISHER, *Sec'y.*

52 *Document A, annexed to the deposition of Ygno. F. Coronel.*

{ Governor del Depto. de las Californias. }

Pio Pico, constitutional governor of the department of the Californias:

Whereas the citizen Bernardo Yorba has asked, for his personal benefit and that of his family, a piece of land which for many years he has legally possessed, called the Sierra, on the banks of the river Santa Ana, bounded by the said river and the rancho of Temiscal, the proper proceedings having been taken and inquiries made, in the exercise of the powers which are conferred upon me, in the name of the Mexican nation, I have, by a decree of this day, granted him the said land, declaring it his property by these presents, in conformity to the law of the 18th of August, 1824, and the regulation of the 21st of November 1828, August to the approval of the departmental assembly and under the following conditions:

1st. He shall have power to enclose it without injury to the crossings, roads, and servitudes; he shall enjoy it freely and exclusively, applying it to the use and cultivation which may best suit him.

2d. He shall solicit the proper judge to give him the judicial possession in virtue of this decree, by whom the boundaries shall be marked with the necessary monuments.

3d. The land of which donation is made is four leagues "de ganado mayor."

The judge who shall give the possession shall have it measured in conformity to the ordinance, leaving the surplus, if any remains, to the nation for the purposes for which it may be required.

53 Wherefore I order that this title, being held firm and valid, be recorded in the proper book and be delivered to the party interested for his security and other purposes.

Given in the city of Los Angeles, on this common paper, for want of sealed, the 15th of June, 1846.

PIO PICO.

JOSÉ MATIAS MORENO,
Sec'y ad int.

This superior decree is recorded in the proper book, date as above.
MORENO.

In the city of Los Angeles of the department of the Californias, on the 18th of July, 1846, in compliance with the verbal request of Don Bernardo Yorba for the judicial possession of a place called La Sierra, on the banks of the river Santa Ana, granted by his excellency the governor, as shown by the title herewith presented, let assisting witnesses go with me to the measurement, and after notice to the adjoining owners, let proceedings be taken to give possession in exact conformity to the title of the 15th of June last.

Thus I, Leonardo Cota, presiding officer of the ayuntamiento, first alcalde and judge of the 1st instance, decreed, ordered, and signed, with assisting witnesses, according to law, on this common paper, for want of sealed. Certified.

LEONARDO COTA.

Assa: YGNACIO PALOMARES.
Assa: JUAN FOSTER.

Then I gave notice to the adjoining owners, informing them that I was going to remeasure the Sierra on the banks of the river Santa Ana and put Don Bernardo Yorba in possession of it, where-

54 fore they were warned to be upon their boundaries. These persons made no objection when informed. Entered officially.

LEONARDO COTA.

Assa: YGNACIO PALOMARES.
Assa: JUAN FOSTER.

In continuation, being in this city, horses were brought to go out on, and having obtained them we started. Entered officially.

COTA.

On the 19th of the same year, being at the sierra on the banks of the river Santa Ana, I appointed two chain-bearers, Ygnacio Sepulveda and Gabriel Garcia, whose signatures are omitted, they not knowing how to write. They accepted and took the usual oath to discharge their duties faithfully and legally, which was done officially. Authorized and signed by me, with assisting witnesses, according to law.

LEONARDO COTA.

Assa : YGNACIO PALOMARES.
Assa : JUAN FOSTER.

Being still at the sierra, and the chain-bearers and assisting witnesses being present, I caused a cord to be measured one hundred varas long, to the extremities of which I ordered sticks of wood to be attached, and after observation and calculation, by my direction the measurement was begun at a small hill (lomita) on the boundary of the Cajon de San Antonio, and continued to the eastward 1,600 varas to a ravine or valley where wood is cut, (Catada Corte de Madera;) thence about north 45° east 7,500 varas to the bank of the river, close to the hill (loma) which is near a willow thicket, (monte de saus,) and here a mark was ordered to be put; thence about 60° east, 11,500 varas to a dry creek, (arroyo seco,) the boundary of Temescal on a summit of the mountain of Huata, (pecacho de la Sierra de la Huata;) thence in a southerly direction 5,000 varas to the foot of the mountain, where there are some oak trees, which are on the boundaries of the said Temescal, and here a landmark was ordered to be placed; thence in an easterly direction 13,000 varas to the same lomita where the measurement begun. The adjoining owners appeared on their respective boundaries, without making any objection. The measurement being concluded, I gave solemn and judicial possession, in the name of the Mexican nation, to Don Bernardo Yorba, wherewith he was satisfied, and this act concluded, which I authorised and signed, with the assisting witnesses, according to law.

LEONARDO COTA.

Assa: YGNACIO PALOMARES.
Assa: JUAN FOSTER.

ANGELES, *July* 10*th*, 1846.

Let a copy of these proceedings be delivered to Don Bernardo Yorba, in order that, being attached to his title, it may give him evidence and security.

Thus I, the judge, officially decreed and ordered, with assisting witnesses, according to law.

LEONARDO COTA.

Assa : YGNACIO PALOMARES.
Assa : JUAN FOSTER.

The proper copy was then given him, the erasure of the word "assa" made before signing. Compared with the original, which

is among the records of this year, from which this is taken
56 and correctly copied upon two sheets of common paper, for want of sealed, as I certify.

LEONARDO COTA.

Assa : YGO CORONEL.
Assa : JULIAN CHAVES.

Filed in office October 15th, 1852.

GEO. FISHER,
Secretary.

58 *Opinion.*

BERNARDO YORBA
vs.
THE UNITED STATES. } La Sierra.

The petitioner in this case has placed on file, duly proved, a grant obtained from Governor Pio Pico for the place called La Sierra, containing four square leagues.

He has also placed on file an office copy, duly proved and authenticated, of the juridical measurement of said tract of land, performed and executed on the 19th day of July, A. D. 1846. There is no proof that any approval was ever made by the departmental assembly.

Several depositions are on file in this case, taken in regard to the occupancy and inhabitancy of the land by the grantee, which, after a careful examination, will be found to contain no material discrepancy with each other. It is recited in the grant that the grantee had been legally possessing the land granted for many years. If this recital in the grant was unexplained, the inference might be drawn that he lived upon the land and had occupied it in person. By reference, however, to the petition of the parting asking for the land, and which is the first paper in the espediente filed in the case, it will be seen that the claimant describes himself in the following words, to wit: I, Bernardo Yorba, owner of the rancho of San Antonio, Sta. Ana and river, and residing in this city, present myself before your excellency, &c., &c.

59 From the statement here made, it is plain that the claimant at the date of his petition to the governor did not reside on the land in question, but that he resided in the city of Los Angeles. Abel Stearns, a witness on the part of the claimants, states, in his deposition, that he knew the place granted from the years 1834 and 1835, and that it was occupied from that time, and he believed previously, by James and Bernardo Yorba, with cattle and other stock. He then explains the kind of occupation to which he refers in the following words: Their residence was not on the land. It was grazing land used for the keeping of stock. And he then adds, the occupation has been continued in the family until the present time. The statements here made correspond with the declaration made by the party himself in his petition, as above stated, and shows clearly that the party held the land as a grazing rancho, and that he never lived upon the place in person.

The deposition of Ignacio Coronel shows the particular kind of occupation which the claimant and his brother Thomas had of this

place. After stating that he first saw the land in 1837, he says it has been occupied by Tomas and Bernardo Yorba, who had houses on it occupied by their servants, and had cattle there; and they occupied it together until the death of Tomas, in 1845, at which time he says that the land was divided, and that the land granted to
60 Bernardo has been occupied by him ever since the grant. The meaning which this witness evidently attached to the word occupied is explained by himself in the previous part of his depotion; he means that it was occupied by the servants of the grantee, and if there was any other kind of occupation, it should have been shown.

A single question by that officer representing the government would in this case have explained in the ambiguity of the language used by the witness, but no such question is propounded.

José Antonio Carrillo states in his deposition that Bernardo had occupied the same land since the year 1833, and that it had been previously occupied by Antonio Yorba, the father of Bernardo Yorba, from the year 1810, in company with the Peraltas. This witness, as well as the others, seemed to consider that any kind of reputed ownership of the land was expressed by using the word occupy.

All the testimony filed in the case goes to show that the claimant occupied the land both before and after the grant through others, and not in person. Indeed, it is in proof that the land is situated forty miles from the place where the claimant resided at the time he asked for the grant of the place called La Sierra.

Although this place was evidently held for a long time by the Yorba family as a grazing rancho, it is not pretended that they ever had a title of any kind previous to the one under which Bernardo now claims. The case has none of those merits which attach to a
61 homestead, but was doubtless occupied for grazing purposes under the privileges which belonged to every citizen as long as the lands of the nation remained public, and before they were reduced to private property.

The party having failed to show anything like a personal inhabitancy of the land claimed according to the principles heretofore laid down by this commission, he has not entitled himself to a confirmation of his claim.

There is, however, another insuperable objection to the confirmation of this claim: there is no sufficient or different segregation of the land granted. The description of the land as contained in the grant is of itself altogether too vague and indefinite; a juridical measurement of the land was therefore indispensable. The record of judicial measurement which the party placed on file is wholly unintelligible, and its calls are so inconsistent with each other that it is impossible to give them a definite location.

For these reasons we are of opinion that the claim in this case should be rejected.

Filed in office February 14th, 1854.

GEO. FISHER, *Sec'y.*

62 *Decree.*

BERNARDO YORBA
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is not valid, and it is therefore decreed that his application for a confirmation thereof be denied.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office February 14th, 1854.

GEO. FISHER, *Sec'y.*

Dissenting opinion of Thompson.

I dissent from the opinion of the majority in this case for the reasons set forth in my dissenting opinion in case Anastacio Carrillo *vs* The United States, for the place called "Punta de la Concepcion;" and for the further reason that the land is, in my opinion, sufficiently identified by the description contained in the grant and act of juridical possession.

R. AUG. THOMPSON, *Com'r.*

64 *Order.*

And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the southern district of California, it is hereby ordered that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the southern district of California, and the other be transmitted to the Attorney General of the United States.

66 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing fourty-four pages, numbered from 1 to 44, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 382

on the docket of the said board, wherein Bernardo Yorba is the claimant against the United States for the place known by the name of La Sierra.

[SEAL.] In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office.) at San Francisco, California, this thirtieth day of October, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

Filed November 8th, 1854.

C. E. CARR, *Cl'k.*

Appeal, notice of.

68 United States district court for the southern district of California.

BERNARDO YORBA, appellant, *vs.* THE UNITED STATES, appellees.	Notice of intention to prosecute the appeal from the decision of the board of United States land commissioners.

Bernardo Yorba, claimant of the rancho called "La Sierra" in the former county of Los Angeles, but now in the county of San Bernardino and southern district of California, hereby gives notice of his intention to prosecute an appeal from the decision of the board of commissioners "to ascertain and settle the private land claims in the State of California," rendered in his claim for the said land, which was presented to the said board of commissioners, and by them rejected. His claim being that which is numbered on the docket of said board of commissioners No. 382, the transcript whereof, as filed in the office of the clerk of the district court of the United States for the southern district of California, is numbered No. 126.

MYRON NORTON,
Att'y for Appellant.

Filed Jan'y 12th, 1855.

C. E. CARR, *Cl'k.*

70 OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 17*th January*, 1855.

BERNANDO YORBA
vs.
THE UNITED STATES. } 382.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 28th day of September,

1854, the appeal in the district court of the United States for the southern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Filed March 8th, 1855.

C. E. CARR, *Cl'k.*

72 U. S. district court for the southern district of the State of California.

BERNARDO YORBA, appellant,
vs.
THE UNITED STATES, appellee.

To the Hon. Isaac S. K. Ogier, district judge of the United States for the southern district of California:

Your petitioner Bernardo Yorba, a resident of the county of Los Angeles, in said district, respectfully represents that he was the claimant before the board of the U. S. commissioners to ascertain and settle private land claims in the State of California, in case No. 382, for a tract of land situate in said county and district, containing four square leagues of land more or less, and known by the name of La Sierra.

That said tract of land was granted to your petitioner by Pio Pico, then constitutional governor of California, by virtue of authority in him vested on the 15th day of June, 1846, and juridical possession thereof given on the 19th day of July, 1846.

That your petitioner has continued from the time of said grant to live upon and occupy said land with his family and stock up to the present time and now occupies the same.

Your petitioner further represents that on the hearing of said claim by said commissioners, the same was rejected and declared to
73 be invalid.

That a transcript of the proceedings of the said commissioners, and of the documentary evidence and testimony of the witnesses in said case, was duly filed with the clerk of this court on the 8th day of November, 1854, and that on the 12th day of January, 1855, the said claimant filed in the office of said clerk a notice of his intention to prosecute an appeal from the decision of said commissioners.

Your petitioner, therefore, prays that this hon. court will review the decision of the said commissioners and decide on the validity of said claim, and declare the same to be good and valid, and for such other or further relief as shall seem consistent with law and equity.

MYRON NORTON,
Att'y for appellant.

Filed Octo. 2d, 1855.

C. E. CARR, *Cl'k.*

Summons.

74 UNITED STATES OF AMERICA,
Southern District of California, ss:

The President of the United States to P. Ord, att'y of the U. S. for the south. d't of Cal'a, greeting:

Take notice that a petition, a copy of which is herewith served upon you, has been filed against the United States in the district court of the United States in and for the southern district of California on the 2d day of October, in the year of our Lord one thousand eight hundred and fifty-five, at the city and county of Los Angeles, in said district, by Bernardo Yorba, praying said court to review the decision of the U. S. land commissioners rejecting his claim to a tract of land called La Sierra, and that you are required to appear at said court in said city within ten days after the service hereof, if served on you within the county of Los Angeles, and within twenty days if served on you in the county of San Diego or San Bernardino, and and within forty days if served on you in any other county of said State, exclusive of the day of service, and answer said petition, or the petitioner will apply to the court for the relief demanded therein.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Los Angeles, this 7 day of December, A. D. 1855.

C. E. CARR, *Clerk*,
By SAM'L R. DUMMER, *Deputy.*

75 Received December 7th, 1855.

EDWARD HUNTER,
U. S. Marshal,
Per M. L. GOODMAN, *Dep'ty.*

I served this summons, together with a certified copy of the petition, upon P. Ord, U. S. attorney, by delivering to him personally a true copy of the same, at the city of Los Angeles, in the southern district of California, on the eleventh day of February, A. D. 1855.

EDWARD HUNTER,
U. S. Marshal,
Per M. L. GOODMAN, *Deputy.*

Sworn and subscribed before me this 11th Dec., 1855.
C. E. CARR, *Cl'k.*

Motion to take further testimony.

76 District court of the United States, southern district of California.

BERNARDO YORBA, appellant,
vs.
THE UNITED STATES, appellee. } No. 126. "La Sierra."

And now at this day comes the said appellant, by Myron Norton, his attorney, and moves the court that an order be entered in this

case to take additional testimony therein, as well on the part of the said appellant as the said appellee.

MYRON NORTON,
Att'y for Appellant.

Filed October 8th, 1855.

C. E. CARR, *Cl'k.*
Per J. W. ROSS, *D'p'ty.*

Answer of U. S. dist. att'y.

78 In the district court of the United States for the southern district of California.

Los Angeles, December term, 1855.

Hon. Isaac K. Ozier, judge.

BERNARDO YORBA, appellant, *vs.* THE UNITED STATES, appellees. } On appeal from the commission to ascertain and settle private land claims in California, No. 126, transcript No. 382.

The answer of Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, to the petition of Bernardo Yorba, for review of decision of United States land commissioners, says: That he denies all and singular each and every allegation in said petition contained; and further, this respondent denies, generally, the validity of the alleged title to the land claimed by him.

And the said respondent prays that this honorable court will affirm the decision of the said United States land commissioners in said case, and decree the said alleged title to be invalid, and general relief.

P. ORD,
Attorney of the United States for the South'n District of California.

Filed Dec. 14th, 1855.

C. E. CARR, *Cl'k.*

Depo. of Carlos Dominguez.

80 U. S. dist. court, south. dist. of Cala.

BERNARDO YORBA, app'l't, *vs.* THE UNITED STATES, app'l'e, } No. 126.

Deposition of Carlos Dominguez, a witness on the part of appellant, taken, by consent of parties, before Charles E. Carr, U. S. commissioner appointed to take testimony in this case. Present: Agustin Olvera, attorney for claimant; P. Ord, U. S. attorney. Carlos Dominguez, being duly sworn, deposes and says:

O. Morgan sworn as interpreter.

Ques. What is your name, age, and place of residence?

Ans. My name is Carlos Dominguez; my age is 47 years; my residence the county of Los Angeles.

Ques. Do you know a place called "La Sierra?" If yea, where is it situated, and who does it belong to?

Ans. I know the place called "La Sierra," it is situated in the county of San Bernardino; and belongs to Don Bernardo Yorba.

Ques. Are there any prominent landmarks on said place by which it can be known? And, if so, what are they?

Ans. Among the people of the country it is well known as the mountain ranch of Bernardo Yorba.

Ques. Do you know a place called Temascal? If yea, state if it is near the aforesaid rancho, and on which side. (Objected to by the U. S. att'y on the ground of irrelevancy.)

81 Ans. I do; it adjoins the rancho on the east side.

Ques. Do you know if there is a river running near this ranch? If yea, what is it called, and on what side does it run?

(Objected to by the U. S. att'y.)

Ans. The river called Santana runs on the north side of said ranch.

Ques. Besides the mountain already mentioned, is there any other near this rancho? If yea, what is it named; and on which side of the rancho is it situated?

(Objected to by the U. S. att'y.)

Ans. There is; it is called the mountain of Santiago, and is on the south of the ranch.

Ques. Do you know of any other rancho in the county of San Bernardino, known by the name of La Sierra?

Ans. I do not.

Ques. Are there other mountains near the aforesaid ranch? If yea, state whether the ranch before mentioned could be distinguished from them.

Ans. There is no other mountain of a similar character or appearance?

Ques. Do you know if Bernardo Yorba has lived, at any time, on the aforesaid rancho?

Ans During the marking and branding of cattle he was there personally, and at other times his sons and persons in his employ were on the rancho.

Ques. Do you know if there is any kind of improvement or property on the rancho? If yea, state what they are.

82 Ans. There are; houses, corrals, and lands under fence for cultivation on the rancho. There are also cattle and horses on the ranch belonging to Bernardo Yorba.

Ques. Have the limits or boundaries of the said ranch, as claimed by Bernardo Yorba, ever been disputed by any of his neighbors?

Ans. To my knowledge they never have.

Cross-examined.

Ques. Where were you born?

Ans. In San Diego.

Ques. Where do you now live?

Ans. On the Santa Ana river, on my own rancho, which has no particular name.

Ques. Did you ever have a grant for it?

Ans. Yes; it belongs to my wife, and granted to her ancestors in the time of the king, and from them inherited by her; my wife's father was named Juan Peralta; where I now live was part of the Peralta ranch, granted in the time of the king to the ancestors of my wife.

Ques. How far is it from the house of Yorba, where he now lives, to the rancho of La Sierra?

Ans. About three leagues.

Ques. What is your occupation?

Ans. I am a laborer.

Ques. In whose employment are you at the present time?

Ans. In no one's.

Ques. Have you not been of late in the employment of Yorba?

83 Ans. I have served him for friendship's sake, but never with the expectation of receiving wages.

Ques. How long have you known the rancho of La Sierra?

Ans. Since the year 1834.

Ques. How do you know that the place called Temescal adjoins the rancho of the Sierra?

Ans. I have worked on the place on many occasions, and the lands belonging to the rancho de la Sierra have been pointed out to me by Yorba, the owner.

his
CARLOS + DOMINGUEZ.
mark.

worn and subscribed this 5th day of Feb'y, 1856, before me.
C. E. CARR, *Cl'k.*

Filed Feb'y 5th, 1856.

C. E. CARR, *Cl'k.*

84 BERNARDO YORBA, app'l't, *vs.* THE UNITED STATES, appel. } No. 126. La Sierra.

Depo. of J. J. Warner.

Deposition of J. J. Warner, a witness on the part of appellant in the above case, taken at Los Angeles this 18th day of Feb'y, 1856, before Chas. E. Carr, U. S. com'r for the State of California.

Present: Norton and Olvera, att'ys for appellant, and P. Ord, U. S. att'y.

J. J. Warren, being duly sworn, in answer to questions propounded by counsel for the several parties, states as follows, to wit:

Ques. What is your name, age, and place of residence?

Ans. My name is J. J. Warner; my age is 48 years; my residence San Diego.

Ques. Do you or not know the rancho called La Sierra, claimed by Bernardo Yorba, in this case? And if so, in what county is it situated; and how long have you known it?

Ans. I know it. It is partly, or in whole, in the county of San Bernardino, which formerly composed a part of the county of Los Angeles. I have known it for twenty-three years.

Ques. Do you know a place or rancho called Temescal? And if so, state its locality and position relative to the rancho of La Sierra.

Ans. I know it. It is situated on the southeast side of La Sierra.

Ques. Does it not adjoin the Sierra?

85 (Objected to by the U. S. att'y.)

Ans. It does.

Ques. Do you or not know a place or rancho called "Gnapa?" And if so, state its location and position relative to the rancho of La Sierra?

(Objected to by the U. S. att'y.)

Ans. I know it. It is situated northeasterly of La Sierra.

Ques. Do you or not know the sierra or mountains called Santiago? If so, state their position and locality with reference to the rancho of La Sierra.

(Objected to by the U. S. att'y.)

Ans. I know of such a range of mountains. It lies along the southwestern side of La Sierra.

Ques. Do you know the river called Santa Ana? And if so, state its position and course relative to the ranch of La Sierra.

Ans. I know the river. It runs along on the northerly side of this rancho; its course being from the northeasterly to a southwesterly direction.

Ques. How far is it from the river Santa Ana to the northwestern boundary line of Temescal?

Ans. I should judge about seven miles.

Ques. How far is it from the Sierra Santiago to the southwestern boundary line of the rancho called "Gnapa?"

(Objected to by the U. S. att'y.)

Ans. I should judge about four or five miles.

Ques. Are or are not the places and objects which you have mentioned called Temescal, Gnapa, Sierra Santiago, and river Santa Ana, well-known and recognized places and objects? And have they or not been thus well known and recognized ever since you were

86 acquainted with the rancho de La Sierra?

(Objected to.)

Ans. They are and have been.

Ques. Do or not the lands claimed in this case, called rancho de La Sierra, lie within the places and objects which you have mentioned?

(Objected to by the U. S. att'y.)

Ans. They do.

Ques. State about how much land is embraced within the places and objects you have described.

(Objected to by U. S. att'y.)

Ans. I should think about three or four square leagues.

Ques. Look upon the map contained in the transcript in this case and state whether or not it is a correct delineation of the lands claimed in this case, called La Sierra; and whether or not the points of compass are correctly marked on said map.

(Objected to by the U. S. att'y.)

Ans. I think it is, generally, a pretty correct delineation of the lands. The points of compass are not correct.

Ques. State in what respect the points of compass are incorrect as marked on the map.

(Objected to by the U. S. dist. att'y.)

Ans. The cardinal points are there reversed; north should be where south is, and east where west is.

Ques. Do you or do you not know the place or rancho called San Antonio? And if so, state its position relative to the rancho of La Sierra.

(Objected to by U. S. att'y.)

87 Ans. I know it. It lies on the northwest; the two ranchos adjoining for about one mile, or separated solely by the river Santa Ana.

Cross-examined by the U. S. att'y.

Ques. What is your profession or occupation?

Ans. I am a farmer.

J. J. WARNER.

Deposition closed.

Sworn to and subscribed this 18th day of Feb'y, A. D. 1856, before me.

C. E. CARR, *Cl'k.*

Filed Feb'y 18th, 1856.

C. E. CARR, *Cl'k.*

88 *Depo. of Henry Hancock.*

BERNARDO YORBA, appellant,
vs.
THE UNITED STATES, appellee.
} Case No. 126.—For "La Sierra."

Deposition of Henry Hancock, taken before C. Sims, United States commissioner for the district of California, at the United States court-house in the city of Los Angeles, on Monday, the 19 day of January, A. D. 1857, at 2½ o'clock p. m. on said day, on behalf of the appellant, by the consent, and to be used as testimony in a certain cause now pending in the U. States district court for the south. dist. of California, being case No. 126 on the docket of said court, wherein Bernardo Yorba is appellant, and the United States are appellees.

Present: Olivera & Horton, attorneys in behalf of the appellants, and P. Ord, U. S. dist. att'y, in behalf of appellees.

Quest. What is your name, age, and place of residence?

Ans. Henry Hancock; I am 34 years of age, and I reside in Los Angeles county, State of California.

Ques. Are you a surveyor by profession?

Ans. I am a surveyor. I am now a United States deputy surveyor, and have been such since 1853, in the State of California, and am now also the county surveyor of Los Angeles county.

Ques. Who was the deputy surveyor under you in the months of October and November, in the year 1855?

Ans. George Hansen.

Ques. Do you know the rancho called "La Sierra," claimed
89 in this case by Bernardo Yorba, and how long have you known it?

Ans. I do. I have known it since 1853, at which time I run township lines in its vicinity, but at the time I had no distinct knowledge of its exact locality, but, since the latter part of 1855, I have known what the claimants claimed to be the tract of land embraced in said ranch.

Ques. Do you know whether said ranch has been surveyed; and if so, when, and by whom?

Ans. I do. It was surveyed by George Hanson, in the month of October, A. D. 1855.

Quest. A map is here shown to the witness, marked A. C. S., and made a part of this deposition, when the witness is asked to state whether or not the said map is a correct delineation of the tract of land called "La Sierra," and claimed by Bernardo Yorba.

(Objected to by U. S. att'y.)

Ans. To the best of my knowledge and belief it is.

Ques. Do you know the place or rancho called the "Rincon;" and if so, state what direction it is, and how far from the rancho "La Sierra."

(Objected to by U. S. att'y.)

Ans. I know that the tract of land adjoining the rancho "La Sierra," on the west and on the opposite side of Santa Ana river, is called the Rincon.

Ques. Do you know the ranch called the Temascal; and if so, in what direction, and how far is it from the rancho "La Sierra."

(Objected to by U. S. att'y.)

90 Ans. I know the tract of land adjoining the rancho "La Sierra" on the southeast to bear the name of rancho Temascal.

Ques. Do you know the tract of land called "Gnapa," and how is it situated in reference to the rancho "La Sierra?

(Objected to by U. S. att'y.)

Ans. I have understood that the tract of country adjoining "La Sierra" on the north, and bordering on the river, bore the name of "Gnapa."

Ques. State, as near as you can, how much land is embraced within the places you have named, and as described on said map.

(Objected to by U. S. att'y.)

Ans. There is the vicinity of four square leagues. The map here presented shows area of nearly four square leagues, and I believe it to be correct.

Ques. Do you know whether George Hanson has left this country; and if so, when he left, and for what country?

Ans. He left in the last steamer, about a week since, for San Francisco, and is not to return, that I know of. I have for some time known him to profess to be making his arrangements to depart for Sonora or Central America. To what place he has gone I know not.

Cross-examined by P. Ord, esq., U. S. att'y.

Ques. You say that Mr. Hanson was your deputy surveyor. Do you mean that he was deputy surveyor of Los Angeles county?

Ans. I do.

91 Ques. In what county is the land claimed in this case situated?

Ans. In what is now called San Bernardino county, and what formerly was a part of Los Angeles county.

Ques. When was the county of San Bernardino established?

Ans. I do not recollect.

HENRY HANCOCK.

Sworn and subscribed to before me this 19th day of January, 1857.

C. SIMS, *U. S. Com'r.*

I, C. Sims, of the city and county of Los Angeles and State of California, commissioner to take affidavits and bail in civil cases pending in the courts of the United States, and depositions, under the acts of Congress approved September 24th, A. D. 1789, February 20th, A. D. 1852, and March 1st, A. D. 1812, by virtue of my office of clerk of the United States court of the southern district of California, and by special appointment by the United States circuit court for the State and circuit of California, do hereby certify that the foregoing deposition of Henry Hancock was taken before me on the 19th day of January, A. D. 1857, according to the agreement and consent of the said attorneys of the parties, at the United States district court-house in the city of Los Angeles and State of California, in behalf of the appellant. That the said Henry Hancock was by me duly sworn, according to law, as a witness in said cause in the caption of this

92 deposition mentioned, and after being so sworn, his testimony was by me reduced to writing in his presence, and after having been by me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof, I hereunto set my hand and private seal (not having a seal of office) this 19th day of January, A. D. 1857.

C. SIMS,
United States Commissioner.

Filed January 19th, 1857.

C. SIMS, *Cl'k.*

(Here follows map, marked original, page 94.)

95 *Decree.*

In the district court of the United States for the southern district of California.—December term, A. D. 1856.

BERNARDO YORBA, appellant,
vs.
THE UNITED STATES, appellee. } No. 126.—La Sierra.

This cause coming on to be heard on appeal from the final decision of the board of U. S. land commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved March 3d, 1851, upon the transcript of the proceedings, papers, and evidence had and taken before the said board, and upon the additional evidence taken in this court; and it appearing that the said transcript and a notice of the intention of the appellant to prosecute the said appeal have been filed with the clerk of this court, and counsel for the respective parties having been heard—

It is ordered, adjudged, and decreed by the court that the decision of the said commissioners be reversed and set aside, and that the title of the said appellant, Bernardo Yorba, to the lands claimed in this case be decreed to be good and valid.

The lands of which confirmation is hereby made are situated in the county of San Bernardino, and are known by the name of La Sierra, being the same lands which were granted to the said Bernardo
96 Yorba on the 15th day of June, A. D. 1846, by Pio Pico, then governor of California, which grant is hereby confirmed to the extent of four square leagues, and no more, and which lands are bounded and described as follows, to wit: situated on the bank of the Santa Ana river, and bounded by the said river and the rancho of Temascal; and for a more particular description of the same reference, is hereunto had to the original grant and map, contained in the transcript, and to the testimony on file in this case.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the S. Dist. of Cal'a.

Filed January 22nd, 1857.

C. SIMS, *Cl'k.*

97 *Appeal.*

United States district court, south'n dis. Cal'a.—Regular December term, 1856.

FEB'Y 24th, A. D. 1857.

BERNARDO YORBA
vs.
THE UNITED STATES. } No. 126.

On motion of P. Ord, U. S. dis't att'y, it is ordered that an appeal be allowed the United States in the following cases, to wit, No. 126.

New appeal.

United States district court, south'n dis't Cal'a.—Regular December term, 1861.

DE EMBER 9th, A. D. 1861.

BERNARDO YORBA, app'ee,
vs.
THE UNITED STATES, appl't. } No. 126.

And now comes J. R. Gitchell, esq., appointed at the request of the court to act in behalf of the United States, (there being no U. S. dis't att'y present,) and moves the court that a new appeal be allowed the U. S. in this case to the Supreme Court of the U. S. from the order and decree of this court heretofore rendered ; which motion being heard, and by the court understood, is granted.

98 *Confirmation of order of appeal.*

United States district court, south'n dis't California.—Regular June term, A. D. 1862.

JUNE 3d, 1862.

BERNARDO YORBA, app'ee,
vs
THE UNITED STATES, appl't. } No. 126.

In this cause, on motion of the U. S. dis't att'y, it is ordered that the previous order of this court, of date the 9th December, A. D. 1861, granting an appeal to the U. States herein, be, and the same is hereby, confirmed.

99 United States district court, southern district of Cal'a.

CLERK'S OFFICE, *Monterey.*

I, John O. Wheeler, clerk of the United States district court for the southern district of California, hereby certify the above and foregoing ninety-eight pages, numbered from 1 to 98, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said court of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in my office, in case No. 126 on the docket of said court, wherein Bernardo Yorba is the claimant against the United States for the place known by the name of La Sierra.

In testimony whereof I have hereunto set my hand and affixed the [SEAL.] seal of said court this the 17th day of June, A. D. 1862, at the city of Monterey, Cal'a.

JOHN O. WHEELER,
Cl'k U. S. Dist. Court, S. Dist. Cal'a.

Filed July 19, 1862.

SUPREME COURT OF THE UNITED STATES.

No. 140.

December Term, 1863.—Appeal from the United States district court for southern district of California.

THE UNITED STATES, appellants,
vs.
BERNARDO YORBA, appellee.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

The United States object to the decree of confirmation in this case for several reasons :

1st. The grant is proved only by *secondary evidence* of the *handwriting* of the governor, Pio Pico, and his secretary, José Mat as Moreno, *without any legal foundation having been laid for dispensing with the primary evidence.* (See printed Record, p. 3, fol. 7–8.)

2d. It is one of the *latter-day grants* for four leagues of land, made by Pio Pico, June 15, 1846, and therefore void, as against the United States, because made after May 13, 1846.

The argument for the United States on this point has already been presented, in the case of the *United States* vs. *Julian Workman et al.* No. 130 of this term, to which the counsel for the United States beg leave to refer. The decision on this point in that case will necessarily dispose of it in this case also.

3d. But admitting the competency of the governor to make the grant after May 13, 1846, the grant is illegal, because it does not contain the usual conditions, requiring *building* within a year, *cultivation* and *inhabitancy*, as required by the regulations of 1828 and the practice of the government.

The evidence shows that the *grantee never resided on the land* before or after the grant, but merely herded his cattle upon it, as vacant public land. His prior occupancy of it, in that way, can give him no equity to its confirmation on the ground of prior possession. He stands upon his grant alone; and if that is found to be illegal, his claim must be rejected.

By the first section of the regulations of 1828 "the governors of the territories are authorized (in compliance with the law of the general congress of the 18th of August, 1824, and *under the conditions* hereafter specified) to grant vacant lands in their respective territories to such contractors, (empressarios,) families, or *private persons*, whether Mexicans or foreigners, who may ask for them *for the purpose*

of cultivating and inhabiting them." (Halleck's Report, Appendix No. 5, sec. 1.) The governor, therefore, had no authority to grant lands, *except upon conditions* for the purposes of *cultivation* and *inhabitancy*, which he did not do. This view of the law is very strongly presented in the opinion of the land board, to which the attention of the court is invited. (See Printed Record, pp. 26–27.)

4th. The ungenerous and fraudulent conduct of the grantee and claimant towards the widow of his deceased brother, Thomas, as disclosed by the record, although it may be no reason, in itself, for rejecting the claim, yet it furnishes a reason for conceding to him *nothing but his strict legal rights.* (See printed Record, p. 17; fol. 40, p. 18; fol. 41–42, pp. 21–22. Granting him those, and those only, his claim must be rejected.

JOHN A. WILLS,
Special Counsel.
EDWARD BATES,
Attorney General.

SUPREME COURT OF THE UNITED STATES.

No. 242.

THE UNITED STATES, APPELLANTS,

vs.

GEORGE C. YOUNT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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Gideon Print.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered that on this twenty-sixth day of May, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of George C. Yount, for the place named "Caymas," was presented and ordered to be filed and docketed, with No. 243, and is as follows, to wit:

(Vide pages 4, 5, and 6 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

THURSDAY, *May 27th*, 1852.

In case No. 243, George C. Yount, the deposition of Mariano G. Vallejo, a witness in behalf of the claimant, taken before commissioner Harry J. Thornton, was filed, and is in the words and figures as follows, to wit:

(Vide pages of this transcript.)

FRIDAY, *May 28th*, 1852.

In case No. 243, George C. Yount, the deposition of Salvador Vallejo, a witness in behalf of the claimant, taken before commissioner Harry J. Thornton, was filed, and is in the words and figures as follows, to wit:

(Vide pages of this transcript.)

SATURDAY, *May 29th*, 1852.

In case No. 243, George C. Yount, the deposition of José de la Rosa, a witness in behalf of the claimant, taken before commissioner Harry J. Thornton, was filed, and is in the words and figures as follows, to wit:

(Vide pages of this transcript.)

FRIDAY, *September 3d*, 1852.

In case No. 243, George C. Yount, for the place called "Caymas," the parties litigant filed the following stipulation relative to placing this case on the trial docket, which is as follows, to wit:

We agree that the above entitled cause be put on the trial docket, with the stipulation which is hereby entered into, that either the law

agent or the claimant may introduce further testimony previous to the argument of the case.

HALLECK, PEACHY & BILLINGS,
Att'ys for claimant.
GEO. W. COOLY, *U. S. Law Agent.*

FRIDAY, *September* 3*d*, 1852.

The following case was ordered to be placed on the trial docket, subject to the stipulations filed by the parties litigant, to wit:

No. 243.—George C. Yount.—"Caymas."

TUESDAY, *September* 28*th*, 1852.

In sundry cases, numbered as follows, the counsel for the claimants filed the following motion, to wit:

Moved that *in* cases numbered 13, 243, 141, be placed on the trial docket.

HALLECK, PEACHY & BILLINGS,
Attorneys for Claimants.

Which motion was taken under advisement.

FRIDAY, *December* 31*st*, 1852.

In case No. 243, George C. Yount, for the place named "Caymas," the deposition of José Maria Covarrubias, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with document marked H. H, No. 1, annexed thereto, and is in the words and figures as follows, to wit:

(Vide pages of this transcript.)

MONDAY, *February* 7*th*, 1853.

Case No. 243, George C. Yount, for the place named "Caymas," called; the counsel for the claimant, Mr. Halleck, read the petition and the papers in evidence.

The United States associate law agent filed his brief. Case submitted and taken under advisement by the board.

TUESDAY, *Febr'y* 8*th*, 1853.

In case No. 243, George C. Yount, for the place named "Caymas," Commissioner Harry J. Thornton delivered the opinion and the decree of final confirmation of this board.

Ordered, that the opinion and the decree of final confirmation of this board, delivered this day in this case, be recorded on the journal.

Which opinion and decree are in the words and figures as follows, to wit:

(Vide pages of this transcript.)

Petition.

To the honorable Commissioners to settle private land claims in California:

The petitioner, George C. Yount, respectfully shows: That on the 23d day of February, A. D. 1836, Nicolas Gutierres, governor of California, by virtue of authority in him vested, granted to the petitioner the tract of land called Caymas in the then jurisdiction of the North, or Sonoma, and now county of Napa, containing two square leagues, in conformity with the corresponding map, and the boundaries described in the title-papers; a copy of which title and map is submitted herewith marked "A," with a translation marked "B."

The petitioner also submits a copy of the record in the archives now in charge of the surveyor general of the United States, marked "C." The petitioner also submits herewith a copy of the record of the espediente in said archives, marked "D," with a transcript marked "E," which record, he alleges, is imperfect, incomplete, defective, and otherwise mutilated and changed.

And the petitioner further shows, that said grant was subsequently approved by the territorial deputation of California.

That the said tract of land was duly surveyed, and the juridical possession of it given to the petitioner on the 12th day of February, A. D. 1842; a copy of which act of possession is submitted herewith, marked "F," with a translation marked "G."

That the said tract of land has not been surveyed by the surveyor general of the United States, but was duly surveyed at the time of giving the juridical possession as aforesaid, and that the boundaries are well known.

That the petitioner has been for more than sixteen years, and now is in the quiet, peaceful, and undisputed possession and occupation of the aforesaid tract of land.

That he knows of no conflicting claim—that he relies for confirmation of title upon the original papers, copies of which are submitted herewith, and upon such other and further proofs as he may be advised are necessary.

Wherefore, he prays the commissioners to confirm to him the said tract of land.

By his Attorneys,
HALLECK, PEACHY & BILLINGS.

Filed in office, May 26th, 1852. GEO. FISHER, *Sec'y*.

[1 S. D. K.]

Jurisdicion de Sonoma.—Año de 18—(Original torn off to this line.)

Espediente promovido en solicitud del terreno q. indica el diseño por Jorge de la Concep'on Yount.—154.

[2 S. D. K.]—Sello Tercero, Dos Reales.

Habilitado provicionalmente por la administracion de la aduana ma-

ritima de Monterey, de la Alta California, para los años de mil ochocientos, treinta y seis, y mil ochocientos treinta y siete.

GUTIERREZ. A. RAMIREZ.

Rancho de Caymas.

Espediente.

Sr. Gefe Politico:

Jorge de la Concep'on Yount, hante V. S., como mejor haya lugar en derecho hase presente, q. de proporcionarse pr. medio de la agricultura su subsistencia en este pais, donde trata de establecerse é allandose un parage baldio en el terreno de Napa, como indico el diseño adjunto.

A V. S. suplico vendidamente se sirva conserderme el demarcado en el referido diseño q. compone dos sitios de ganado mayor, es gracia q. espera alcamar, jurando no ser de malicia, &c.

JORGE DE LA C. YOUNT.

Monterey, Febrero 1o, de 1836.

(In the margin.)

MONTEREY, *Febrero 2o, de* 1836.

De conformidad con lo dispuesto por las leyes de la materia, informe el comandante militar de la frontera, si el interesado en esta instancia obtiene los requisitos prevenidos para ser atendido en su solicitud, si el terreno que pretende esta comprendido en las veinte leguas limitrofes ó diez litorales, que espresa la ley de 18 de Agosto, de 1824, si es de regardio temporal ó abredadero ni pertenece a la propiedad de algun particular corporacion, ó pueblo, con todo lo demas que crea conveniente á ilustrar la materia.

[3 S. D. K.]

El S'or Dn. Nicolas Gutierrez, teniente coronel de caballarea, permamente comandante general, ynspector y gefe superior politico del territorio de la Alta California, asi lo mando, decreto y firmo.

De q. doy fé.

NICOLAS GUTIERREZ.
F'CO DEL CASTILLO NEGRETE, *S'rio.*

S'or Gefe Superior Politico:

El terreno que solicita el C. Jorge de la Concep'n Yount, no esta comprendido en las veinte leguas limitrofes ni diez litorales, q. espresa la ley de 18 de Agosto, de 1824; no pertenece a la propiedad de alg'n particular corporacion, ni pueblo, es de regardio y temporal, y el solicitante obtiene todos los requisitos pa. ser atendido en su solicitud.

Mon—

[4 S. D. K.]

[Sello Tercero, Dos Reales.

Habilitado provicionalmente por la administracion de la aduana mar-

itima de Monterey, de la Alta California, para los años de mil ochocientos treinta y seis, y mil ochocientos treinta y siete.

GUTIERREZ. A. RAMIREZ.]

—terey, Febrero 15, de 1836.

MNO. G. VALLEJO.

MONTERREI, *Febr'o* 20, *de* 1836.

Pase al alcalde de este puerto hante quien la parte de Jorge Yount, producira una informacion de tres testigos idoneos quienes interrogados sobre los puntos sig'es:

1o. Si es casado y tiene hijos, si es de buena conducta.

2o. Si el terreno q. pretende pertenece ,á la propiedad de algun, particular corporacion, ó pueblo, si es de regardio temporal ó abrebadero é q. estencion tendra.

3o. Si tiene vienes de campo con q. poblarlos ó posibilidad de adquirirlos ebacuadas q. sean estas diligencias, voluera este espediente pr. su resolucion.

[5 S. D. K.]

El S'r Dn. Nicolas Gutierres, tente coronel í commandante general, vnspector é gefe politico de la Alta California, asi lo mando, decreto, í firmó. De q. doy fé.

NICOLAS GUTIERREZ,
FR'O DEL CASTILLO NEGRETE,
S'rio.

MONTEREY, *Febrero* 20, *de* 1836.

D'ros 4 ps.

Notifiquese al interesado presente los testigos que se han de examinar vajo los puntos a que se contrahe el superior decreto q. antecede y f'ha devuelvase lo actuada al S. gefe sup'r politico, pr. q. serita los efectos q. haya lugar, asi yo el alcalde 1o. de este puerto, lo decreté, y firmé, con testigos de ass'a.

(Fr.) JOSE B. ESTRADA.

De As'a: JOSE MARIA MALDONADO,
De As'a: EUGENIO MONTENEGRO.

[5 S. D. K.]

En— [Sello Tercero, Dos Reales.

Habilitado provicionalmente por la administracion de la aduana maritima de Monterey, de la Alta California, para los años de mil ochocientos treinta y seis, y mil ochocientos trienta y siete.

GUTIERREZ. A. RAMIREZ.]

—la f'ha presente el C. Jorge Yount, se le notifie el auto antecedente y de el entendido dijo lo oye y q. presenta á los Señores D. Guada-

loupe Vallejo, D. Ygnacio del Valle, y D. Timoteo Murfi, y le firmé con migo y los de as'a.

M. GEORGE YOUNT.
ESTRADA.

De As'a: Jose Maria Maldonado,
De As'a: Eugenio Montenegro.

En la misma f'ha presente el C. Guadalupe Vallejo, se le recirvio juramento q. hijo en forma de derecho vajo el cual afrecio decir vervad en lo q. supiere, y fuese preguntado y siendolo por su nombre, estado, edad, y vecindad. Dijo se llama como queda referido; que es casado, de veinte y ocho años y vecino de Sonoma.

Preguntado por el tenor del interrogatorio q. demuestra el superior decreto de hoy q. antecede—Dijo:

A lo 1o. Que el interesado eo vindo tiene hijos, y es de buena conducta, y responde.

A lo 2o. Que el terreno q. solicita no pertenece á propiedad ninguna que tiene de las tres propiedades del contenido de la pregunta y q. su estencion es de dos sitios de ganado mayor; y comterta, a lo 3o:

[7 S. D. K.]

A lo 3o. Que se tiene los suficientes bienes de campo para poblarlo; que lo dicho es la verdad, a cargo del juramento que tiene hecho en el que se afirmó y ratificó, leida q. le fué su declaracion y la firmó, conmigo y los de as'a.

(Fr.) M'NO G. VALLEJO,
JOSE B. ESTRADA.

De as'a: Jose Maria Maldonado,
De as'a: Eugenio Montenegro.

En el mismo dia, mes, y año, siendo presente el C. Ygnacio del Valle, se le recivio juramento q. hizo en forma de derecho por el cual ofreció decir verdad en lo que supiere y fuese preguntado y siendolo por su nombre, estado, edad y vecindad. Dijo—

[8 S. D. K.]

[Sello Tercero, dos Reales.

Habilitado provicionalmente por la administracion de la aduana maritima de Monterey, de la Alta California, para los años de mil ochocientos treinta y seis, y mil ochocientos treinta y siete.

Gutierrez. A. RAMIREZ.]

—se llama como dicho es que es soltero, de edad de veinte y siete años *de edad* y vecino de este puerto preguntado, por el mismo interrogatorio q. lo fué el anterior testigo, digo:

A lo 1o. Que el interesado en la antecedente instancia, es vindo tiene hijos y es de buena conducta, y responde.

A lo 2o. Que el terreno q. se pretende save no pertenece, á propiedad ninguna, q. es de regadio temporal y abrevadero y q. su estencion será de dos sitios de ganado mayor, y contesta.

A lo 3o. Que tiene ambos cosas del contenido de la pregunta, que lo dicho es la verdad á cargo del juramento, q. tiene hecho en el q. se afirmo y ratifico leida, q. le fué en declaracion y la firmo, conmigo y los de as'a.

(Fr.) YGNACIO DEL VALLE,
JOSE R. ESTRADA.

De as'a: JOSE MARIA MALDONADO,
De as'a: EUGENIO MONTENEGRO.

[9 S. D. K.]

En el referido dia, presente D. Timoteo Murfi, le recivi, yo el alcalde, el juramento respectivo; vajo el cual ofrecio decir verdad en lo que supiere y fuere preguntado, y siendolo por su nombre, estado, edad y vecindad. Dijo:

Se llama como dicho es, que es soltero, de treinta y seis años de edad y vecino de este puerto.

Preguntado, por el mismo tenor q. lo fueron los antericres testigos, Dijo:

A lo 1o. Que el solicitante es vindo tiene tres hijos, y es de buena conducta, y contesta.

A lo 2o. Que el terreno solicitado no pertenece a ninguna propiedad de particular mision ni pueblo, y q. se reconoce por valdio: que disfruta de las tres cualidades del contenido de la pregunta y que es de dos sitios de ganado mayor, y responde.

A lo 3o. Que tiene bienes de campo y posibilidad de adquirir los necesarios para poblarlo.

Que lo dicho es la verdad á cargo del juramento que tiene otorgado en el q. se afirmo y ratificó leida, q. le fué su declaracion y la firmo con migo y los de—

[Sello Tercero, Dos Reales.

Habilitado provisionalmente por la administracion de la aduana maritima de Monterey, de la Alta California, para los años de mil ochocientos treinte y seis, y mil ochocientos treinta y siete.

GUTIERREZ. A. RAMIREZ.]

—asistencia en la forma establecidas, segun derecho.

(Fr.)

JOSE R. ESTRADA,
TIMOTEO MURPHY.

De a'sa: JOSE MARIA MALDONADO,
De a'sa: EUGENIO MONTENEGRO.

En la misma f'ha concluida esta informacion se devuelve original al s'or gefe superior politico, seg'n lo mandado en auto de este dia, y para constancia lo anoté y rubrico. R. E.

[11 S. D. K.]

Vista la peticion con q. da principio este espediente el informe del comandante militar, y informacion de testigos, con todo lo demas q. se tuvo presente y ver combieno de conformidad con las leyes y reglamentos de la materia, he venido en declarar dueño absoluto del terreno q. indica el diseño absoluto del terreno q. indica el diseño á Jorge de la Concepcion Yount, á reserva de la aprobacion de la ex'ma deputacion, el S'r D. Nicolas Gutierrez, ten'te coronel, comandante g'ral y gefe politico de la Alta California. Asi lo mandó, decretó y firmo, de q. doy fé.

NICOLAS GUTIERREZ.
FR'CO DEL CASTILLO NEGRETE,
S'crio.

Se le estendia titulo en 23 de Febrero, de 1836.
En 31 de Mayo, paso á la comis'n de terrenos.

MALDONADO, *Scri'o.*

D'ros 12 ps.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such, now having in my office and under my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify, that the twelve preceding and hereunto annexed pages of tracing paper, numbered from one to twelve inclusive, and each of which is verified by my initials, (S. D. K.) exhibit true and accurate copies of certain documents now on file and forming part of the said archives in my office.

In testimony whereof, I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,)
[S. D. K.] at the city of San Francisco, this fifth day of February, A. D. 1852.

SAM'L D. KING,
Surv. Gen'l Cala.

Filed in office, May 26th, 1852.

GEO. FISHER, *Sec'y.*

[*For map see original, between pages* 14 *and* 15.]

Stamp Third, Two Reals.

Provisionally authorized by the administration of the maritime custom-house of Monterey, of Upper California, for the years one thousand eight hundred and thirty-six and one thousand eight hundred and thirty-seven.

(Signed) GUTIERREZ.
(Signed) A. RAMIREZ.

TO HIS EXCELLENCY THE GOVERNOR:

George de la Concession Yount, before your excellency, as he may best in law, representation makes, that being desirous of procuring his subsistence in this country, where he intends to establish himself, by means of agriculture, and having found a vacant place in the land of Napa, as the annexed map shows; therefore he earnestly prays your excellency to have the goodness to grant him that shown on the map referred to, which contains two square leagues, (sitios de ganado mayor;) it is a gift which I hope to obtain, swearing that this is not done with evil intent, &c.

Monterey, February 1st, 1836.

(Sig'd) GEORGE DE LA C. YOUNT.

(In the margin.) MONTEREY, *Feb. 2nd*, 1836.

In conformity with that required by the laws on the matter, let the military commandant report whether the person interested in this petition possesses the requisites prescribed for his petition to be attended to; whether the land which he petitions for is included in the twenty leagues from the boundary, or ten from the sea shore, specified in the law of August 18th, 1824; whether it is irrigable, depending on the seasons, or pasture land; if it pertains to the property of any individual, corporation, or pueblo, together with all other things which he may think conducive to explain the matter.

Señor Don Nicolas Gutierres, lieutenant-colonel of permanent cavalry, commanding general, inspector and governor of the Territory of Upper California, thus ordered, decreed, and signed, to which I certify.

(Sig'd) NICOLAS GUTIERREZ,
(Sig'd) FR'CO DEL CASTILLO NEGRETE,
Secretary.

TO HIS EXCELLENCY THE GOVERNOR:

The land solicited by citizen George de la Concep'n Yount is not included in the twenty leagues from the boundary, or ten leagues from the sea shore, specified by the law of August 18th, 1824; it does not belong to the property of any individual, corporation, or pueblo; it is irrigable, and depending on the seasons, and the petitioner possesses all the requisites for his petition to be attended to.

Monterey, February 15th, 1856.

(Sig'd) M. G. VALLEJO.

MONTEREY, *February 20th*, 1836.

Pass this to the alcalde of this port, before whom the party, George C. Yount, will produce the information of three competent witnesses, who will be questioned upon the following points:

1st. Whether he is married and has children, and is of good conduct.

2d. Whether the land he petitions for belongs to the ownership of any individual, corporation, or pueblo; whether it is irrigable, depending on the seasons, or pasture land, and what its extent may be.

3d. Whether he has cattle (bienes de campo) sufficient to stock it, or a possibility of acquiring enough.

These examinations made, he will return this expediente for its decision.

Señor Don Nicolas Gutierrez, lieutenant-colonel and commanding general, inspector and governor of Upper California, thus ordered, decreed, and signed, to which I certify.

(Sig'd) NICOLAS GUTIERRES.
(Sig'd) FR'CO CASTILLO NEGRETE,
Sec'y.

MONTEREY, *Feb'y 20th*, 1836.

Let the person interested be notified that he present the witnesses which have to be examined upon the points referred to in the foregoing superior decree, and being finished, let that which may be performed be returned to his excellency the governor, that they may serve the proper purposes.

Thus, I, the first alcalde of this port, decreed, ordered, and signed, with assisting witnesses.

(Sig'd) JOSE R. ESTRADA.

Asst'g witnesses:

(Sig'd) EUGENIO MONTENEGRO,
" JOSE MA. MALDONADO.

Fees $4 00. (Rubrick of Estrada.)

On the present date citizen George Yount was notified of the foregoing order, and having understood it, he said that he heard it, and presents Señores Don Guadalupe Vallejo, Don Ignacio del Valle, and Don Timoteo Murphy, and he signed it with me and those of my assistance.

(Sig'd) GEORGE YOUNT.
(Sig'd) ESTRADA.

Asst'g witnesses:

(Sig'd) EUGENIO *Maldonado*,
(Sig'd) JOSE MA. MALDONADO.

In the same date, present citizen Guadalupe Vallejo, oath was received of him, which he made in form of law, under which he promised to speak truth in all that he might be asked and know.

Being questioned as to name, estate, age, and residence, he said: He is called as has been stated, he is married, twenty-eight years of age, and resident of Sonoma.

Questioned according to the tenor of the interrogatories shown in the anteceding superior decree of this day.

Answer to question 1. The person interested is a widower, has children, and is of good conduct.

Answer to question 2d. The land which he solicits does not pertain to any ownership of the three kinds contained in the question, and its extent is two square leagues, (dos sitios de ganado mayor.)

Answer to question 3. He had a sufficient number of cattle (bienes de campo) to stock it. That what he has said is the truth under the responsibility of the oath which he has made, which he affirms and ratifies; this declaration having been read to him, and he signed it with me and those of my assistance.

(Sig'd) JOSE R. ESTRADA.
(Sig'd) MNO. G. VALLEJO.
(Sig'd) EUGENIO MONTENEGRO,
(Sig'd) JOSE MARIA MALDONADO.

In the same day, month, and year, being present citizen Ignacio del Valle, oath was received of him in form of law, by which he promised to speak truth in all that he might be asked; and being asked for his name, estate, age, and residence, he said: His name is as has been stated, he is unmarried, twenty-seven years of age, and resident of this port.

Asked the same questions as the preceding witness.

Answer to question 1. The person interested in the preceding petition is a widower, he has children, and is of good conduct.

Ans. to q. 2d. He knows that the land petitioned for does not belong to the ownership of any person; the land is irrigable, depending on the seasons and pasture land; and its extent is about two square leagues.

Ans. to q. 3d. He possesses both things contained in the question. That what he has said is true by the oath which he has made, which he affirmed and ratified; this declaration being read to him, and he signed it with me and those of assistance.

(Sig'd) YGNACIO DEL VALLE.
(Sig'd) JOSE R. ESTRADA.
Asst'g witnesses:
(Sig'd) EUGENIO MONTENEGRO,
(Sig'd) JOSE MA. MALDONADO.

On the day aforesaid, present Don Timoteo Murphy, I, the alcalde, received of him the proper oath, by which he promised to speak truth in all that he might know and be asked; and being asked for his name, estate, age, and residence, he said: He is named as has been said, he

is unmarried, thirty-six years old, and a resident of this port. Being questioned according to the same tenor as the preceding witnesses, he answered:

Ans. to q. 1. The petitioner is a widower, has three children, and is of good conduct.

Ans. to q. 2d. The land petitioned for does not belong to the ownership of any private individual, mission, or pueblo, and is recognised as vacant; it has the three properties contained in the question, and it contains two square leagues.

Ans. to q. 3d. He has cattle, and a possibility of acquiring the necessary number to stock it.

That what he has said is true under the oath which he has made, which he affirmed and ratified; this, his declaration, being read to him, and he signed it with me and those of assistance, in the form established according to law.

(Sig'd) TIMOTEO MURPHY.

Asst'g witnesses:

(Sig'd) EUGENIO MONTENEGRO,
(Sig'd) JOSE MA. MALDONADO.

On the same date, this information being concluded, this original is returned to his excellency, the governor, according to that ordered in the act of this day; and, in testimony, I made note of it and signed it in rubrick.

(Rubrick of Estrada.)

Having seen the petition with which this espediente begins, the report of the military commander, the information of witnesses, and all other things were represented and deemed proper to be seen, in conformity with the laws and regulations on the matter, I have declared him, George de la Concepcion Yount, absolute owner of the land which the map indicates, subject to the approval of the most excellent deputation.

Lieutenant Colonel Nicolas Gutierres, commanding general and governor of Upper California, thus ordered, decreed, and signed, to which I certify.

(Sig'd) NICOLAS GUTIERRES.
(Sig'd) FRCO. DEL CASTILLO NEGRETE, *Sec'y.*

The title was issued on the 23d of February, 1836.

(Rubrick of Castillo Negrete.)

On the 31st of May it was passed to the committee on vacant lands.

(Sig'd) MALDONADO, *Sec'y.*

Filed in office, May 26th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of M. G. Vallejo.

OFFICE OF THE BOARD OF LAND COMMISSIONERS OF CALIFORNIA,
SAN FRANCISCO, *May 27th*, 1852.

On this day, before me, Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in *in* California, came Mariano Guadalupe Vallego, a witness produced in behalf of the claimant, G. C. Yount, whose petition is No. 243 on the docket of said commissioners, and, after being duly sworn, testified as follows:

The law agent of the United States was duly notified and attended.

Questions by Claimant.

1st question. What is your name, age, and place of residence?

Answer. My name is Mariano Guadalupe Vallejo; my age is 44 years; I reside in Sonoma, and have resided in California all my life.

2d question. Do you know the Rancho de "Caymas" claimed by George C. Yount; and if so, say what you know about its situation, extent, and occupation.

Answer. This rancho is about four leagues in a direct line from Sonoma; I have known this ranch since 1832, when it was in possession of the wild Indians. In 1836 the claimant, Yount, got his concession, and has occupied it ever since the grant. He built a large dwelling-house on it in 1836, in which he lived. He had on it at the time of the grant a large stock of horses and cattle; he has cultivated it ever since in grain, &c.; his cultivation was always of some four or five hundred acres.

Question 3. Do you know who procured the claimant Yount's title from the Government? If so, state who.

Answer. I do know; it was myself.

Question 4. Did you or not present his petition and map or design for the title?

Answer. I did.

Question. Look upon the map, which is filed Exhibit "A" to the petition filed in this case with the land commission, and say whether it is a copy or not of that which you say you presented with the petition in answer to question 4.

Answer. It is a copy of the map which I presented, as above stated.

Question. Look upon the map filed in Exhibit D to the petition filed before this board in this case, and say whether or not this is a true copy of the map which you say above you presented with the petition for the concession; and if not, in what respect is it different?

Answer. It is identical, with the exception of the parallelogram marked with dots on the northwest part of it, and the writing within that parallelogram, "Terreno Seliseta."

Question. Say what lines drawn upon the map in Exhibit D embrace or contain the land which you have stated Yount, the claimant, occupied.

Answer. The black lines around the margin of the map contain the land. It is forty or forty-five miles distant.

Question. How far at its nearest point is this rancho from any bay of the ocean?

Answer. It is from twenty to twenty-five from Napa bay.

Question. Have you at any time compared the map in Exhibit "A" with the original, which you say you presented with the petition for the grant of this rancho?

Answer. I have stated that I made the original map, and upon looking at this in Exhibit "A," I recognised it as a copy of it. I have made no comparison with the two before me, but speak from my knowledge, as stated. The copy, Exhibit "A," I saw here to-day for the first time; I have not seen the original since I presented it in 1836. I have compared the two maps in Exhibit "D" and Exhibit "A," and find them alike, with the exceptions above by me pointed out herein.

M. G. VALLEJO.

The U. S. law agent present.

Sworn to and subscribed before me, this 27th of May, 1852.

HARRY J. THORNTON,
Com'r, &c.

Filed in office, May 27th, 1852.

GEORGE FISHER, *Sec'y.*

Deposition of Salvador Vallejo.

Office of the Board of Land Commissioners for California,
San Francisco, *May 28th*, 1852.

On this day, before me, Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in California, came Salvador Vallejo, a witness produced in behalf of the claimant, George C. Yount, whose petition is No. 243 on the docket of said commissioners, and, being duly sworn, testified as follows. His evidence was given in the Spanish language, and interpreted by George Fisher, Sec'y.

Questions by Claimant's Counsel.

Question 1. What is your name, age, and place of residence?

Ans. My name is Salvador Vallejo; my age thirty-eight years; I reside in Sonoma, county of Napa, State of California, where I have been residing for twenty years; I am a native of California.

Ques. 2. Do you know the rancho called "Caymas," claimed by George C. Yount; and, if so, where is it situated, and what do you know about its occupation?

Ans. I know the said rancho. It is situated in the county of Napa, about seven leagues north of Sonoma.

I know that George C. Yount occupies it, and has occupied the same for the last twenty years with cattle, horses, sheep, swine, and other stock, cultivating the ground on an average from two to three hundred acres annually. He has several houses, a grist and sawmill, several pens for stock, and fences enclosing his cultivated lands, gardens, orchards, and vineyards.

Ques. 3. State what you know about the judicial possession of this rancho.

Ans. I gave juridical possession of the same to George C. Yount in the year of 1842, in the capacity of civil magistrate of the jurisdiction of Sonoma, upon the application of the said Yount, accompanied by a grant from government.

Ques. 4. Look at the document now here shown to you, and say whether it is the original proceedings of said juridical possession, and whether the signatures to it are genuine.

Ans. I have examined the document now before me, and I recognise the same to be written in my own handwriting at the time it bears date, and the signatures attached thereto are the genuine signatures of the parties assisting me in giving the judicial possession of the same, except the writing on the last page, which appears to be the note of record, with a blue seal attached thereto, and which document is herewith marked Exhibit "A," and filed with the deposition in this case. The aforesaid signatures were put upon said document at the time which they bear date.

Question 5. Examine the map, filed as Exhibit "A," with the petition in this case, and say whether or not it represents the rancho claimed by Mr. Yount, and of which you say you gave juridical possession in 1842 to the present claimant?

Ans. I have examined the said map, as above described, and find the same to be a correct representation of the rancho of which I gave juridical possession to Mr. Yount.

Ques. 6. Examine Exhibit "D," filed with the petition in this case, and say what lines represent the boundaries of the rancho of which you say you gave juridical possession to Mr. Yount?

Ans. The four black lines forming a square and separating the drawing, representing the said rancho from the margin of the paper upon which it is drawn.

Ques. 7. When did Mr. Yount first build his house on the land?

Ans. About the year 1833 or 1834; but I am certain that in 1836 he had a house on the land and lived in it.

Questions by the Law Agent.

Ques. 1. Do you know what the distance is from the northern line of said rancho to the bay of San Pablo?

Ans. About twenty-eight or thirty miles.

Ques. 2. Was the land occupied by any mission on the 21st of November, 1828.

Ans. It never has been occupied by any mission.

SALVADOR VALLEJO.

The law agent present.

Sworn to and subscribed before me, this 28th of May, 1852.

HARRY J. THORNTON, *Com'r, &c.*

Filed in office, May 28th, 1852. GEO. FISHER, *Sec'y.*

Deposition of José de la Rosa.

OFFICE OF THE BOARD OF LAND COMMISSIONERS FOR CALIFORNIA,
SAN FEANCISCO, *May 29th*, 1852.

On this day, before me, Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in California, came José de la Rosa, a witness produced in behalf of the claimant, George C. Yount, whose petition is No. 243 on the docket of said commissioners, and after being duly sworn, testified as follows, his evidence being given in the Spanish language and interpreted by George Fisher, secretary.

The law agent of the United States was notified and attended.

Questions by the Claimant's Counsel.

1. What is your name, age, and place of residence?

Ans. My name is José de la Rosa; age sixty-one (61); residence Sonoma, county of Napa.

Ques. 2. Do you know the rancho called "Caymas," claimed by George C. Yount; and if so, say what you know about the juridical possession of that rancho?

Ans. I do know the above rancho, described in the foregoing interrogatory; I also know that juridical possession of the same was given to George C. Yount, by the civil magistrate, Salvador Vallejo, in the year of 1842, and I was present as one of the assisting witnesses of the said magistrate.

Ques. 3. Examine the map filed in exhibit "D" of the petition in this case, and say whether this map represents the lands, of which you say juridical possession was given in 1842?

Ans. It is, with the exception of the dotted line, forming an oblong in the middle of the map.

Ques. 4. How many years have you known this rancho?

Ans. Since the year 1836.

Ques. 5. Has Mr. Yount lived on it since that time?

Ans. He has.

Questions by Law Agent.

Ques. 1. How many leagues is the northerly line of this land from San Pablo bay?

Ans. I do not know exactly, but I think it is about twelve leagues.

Ques. 2. Was the land occupied by any mission on the 21st of November, 1828?

Ans. I do not know.

JOSE DE LA ROSA.

The law agent present.

Sworn to and subscribed before me, this 29th of May, 1852.

HARRY J. THORNTON, *Com'r, &c.*

Filed in office, May 29th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of José Maria Covarubias.

San Francisco, *Dec.* 31*st*, 1852.

On this day, before Com'r Hiland Hall, came José Maria Covarrubias, a witness in behalf of the claimant, George C. Yount, petition No. 243, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to inquiries by counsel for the claimant, the witness testified as follows:

My name is José Maria Covarubias; my age 44 years, and I reside in Santa Barbara, and have lived in California 18 years.

A paper is now shown me purporting to be a grant from Governor Gutierres, dated 23d of February, 1836, to George C. Yount, and is hereto attached and marked H. H, No. 1. At the date of said paper, I was chief clerk in the office of the secretary of the Territory of Upper California. The body of said paper is in my handwritiug, and was written when it purports to have been. I am acquainted with the handwriting of Nicolas Gutierres and Francisco del Castillo Negrete, and believe their signatures to said papers to be genuine.

J. M. COVARRUBIAS.

Sworn and subscribed before me.

HILAND HALL.

Filed in office, Dec'r 31st, 1852.

GEO. FISHER, *Sec'y.*

Juridical Possession and Map—Exhibit "A."

Juzgado de Sonoma.

Esp'te instruido pa. medir y dar posesion de los sitios de ganado mayor, en el rancho de Caimy, el dia once de Feb'ro, de mil ochocientos cuarenta y dos.

El C. Juez,

SALVADOR VALLEJO.

Ass'a: Jose de la Rosa,

Ass'a: Cayetano Joares.

S'or Juez de Pas de la front'a.

Jorge de la Concepcion Yount, vecino de este jurisdiccion del rancho dueño de Caimy, como mejor proseda en d'ho ante V. parezco y digo, q. como consta del titulo q. presento con la solemnidad y juramt'o necesario, tengo en mi d'ho rancho dos sitios de ganado mayor, devajo de los linderos q. esplica el titulo q. acompaño, y pr. q. necesito pr. q. en todo tiempo conste h'ta donde llegan y se me perjudican ó perjudico â alguno de las circumbiernos se sirrira V. mandar q. precediendo las diligencias acostumbrados de identidad vista de ojos y reconocimiento se proceda con citacion de los circumbecinos á la medida de d'has tierras, pa. cuyo efecto nombro haora y pr. cuando el caso llegue pr. medidor al Ciudadano Santos Miguel, vecino de esta jurisdiccion inteligente en esta materia de medidas y otro q. sea interesado nombre otro medidor pr. su parte y haviendolo echo, asi el q. nombren con el referido Santos Miguel, pr. mi nombrado, aperescan acepten y juren y en su conformidad se proseda á d'has medidas.

P. S.

A Ulsted suplico q. haviendo pr. presentado d'ho documento se serva mandar como llevo pedido y echos q. sean se me devuelvan d'hos recandos con las diligencias originales q. se hecieren pr. resguardo de mi derecho este escreto, y todo lo necessario.

GEORGE C. YOUNT.

En el pueblo de Sonoma, a las nueve dias del mes de F'bro, de mil ochocientos cuarenta y dos, ante mi, el C. Salvador Vallejo, command'te militar y juez de esta jurisdiccion, se leye esta peticion y vista la tiene pr. presentada con el docum'to q. espresa y mando q. con sitacion de los circumbecinos se hay informacion de identidad vista de ojos y reconocimiento de d'has tierras a q. estoy pronto à hasistir personalm'te.

Asi lo provez, mande y firme, con los de mi ass'a.

SALVADOR VALLEJO.

Ass'a: Jose de la Rosa,
Ass'a: Cayetano Joares.

En el espresado pueblo à los nuebe dias del mismo mes y año, yo el referido juez, con los de mi ass'a, pa. proceder a la informacion de identidad hize comparecer ante mi, al Ciudadano Ygn. Higuerra, vecino de esta jurisdicion, de oficio labrador del cual recibi juramt'o q. hizo por Dios y la Señal de la Cruz, in forma de d'ho p'r el cual promitio decir verdad y siéndo preguntado pr. el conocimiento de las tierras y parages, terminios y linderos, pertinecientes al C. Jorge Yount, dijo, que hace ocho años es vecino de esta jurisdiccion, y sabe q. las tierras pertenecientas a d'ho rancho son de la propiedad del referido Yount, q. d'has tierras las ha cultivado y an pasteado en ellas sus ganados q. las ha vista y reconocido varias veces y pa. prueba de lo que tiene d'ho, esta pronto á ir a d'has tierras con el juez y senalarle h'ta

donde llegan en qo. se afirmo y ratifico á cargo, del juramento q. tiene echo declaro ser de veinte y ocho años de edad y no tocarle las generales de la ley, y lo firmo con migo y los de ass'a.

SALVADOR VALLEJO,
YGN'O HIGUERRA.

Ass'a: JOSE DE LA ROSA,
Ass'a: CAYETANO JOARES.

En seguida hise comparecer, ante mi y las de ass'a, al C. Ramon Mesa, y haviendole echo prestar el juramt'o de costumbre ofrecio decir verdad y preguntado p'r las tierras parages, terminos y linderos, pertenecientes al C. Jorge Yount, dijo q. hase ocho años es vecino de esta jurisdicion, y sabe q. las tierras d'ho rancho son del referido Yount, q. las a cultivado y han pasteado en ellas sus ganados y q. las á vista y reconocído varias veces en q. se afirmo y ratifico declaro ser de veinte y cinco años de edad, y no tocarle las generales de la ley, y lo firmó con una señal de la Cruz, con migo y los de ass'a.

SALVADOR VALLEJO,
RAMON MESA. ⋈

Ass'a: JOSE DE LA ROSA,
Ass'a: CAYETANO JOARES.

Estando en d'ho rancho á los dies dias del mes de F'bro, de mil ochocientos cuarenta y dos, yo el juez actuando pr. receptoria con testigos de as'a por falta de escribano publico los testigos pr. mi examina dos, presente el C. Jorge Yount, dueño de d'has tierras y los C. C. Jose de la Rosa y Cayetano Joares, los colindantes y circumbecinos prosedi a ver y reconocer y tierras de d'ho rancho, y pa. mas claridad puesto a caballo en compan'a de todas las partes y testigos referidas mande á los—d'hos me señalasen los parajes terminos y linderos segun las señales q. han declarado en sus deposiciones, y en su conformidad guiaron á la parte del oriente donde está situada una loma y habiendo llegado, á la punta donde concluyo esta; dijeron q. de alle pa. la parte del poniente eran las tierras q. pertenecian al C. Yount: Guiaron á este rumbo viendo y reconociendo hasta llegar á un sansalito donde dijeron ser los ultimos parages, terminos y linderos de d'ho rancho quedando, situado este en medio de las dos sierros q. corran de su sueste al nor-norueste cuyos parages yo el repetido jues vi y reconoci con los de mi ass'a testigos, examinados y papeles presentados, y cotejado con estos el referido reconociem'to ser sierta la identificacion de las mencionadas tierras, segun y como lo declararon d'hos testigos y pa. q. conste se puso pr. dilig'o y lo firmo con los de mi ass'a, y demas q. supieron firmar, doy fé.

SALVADOR VALLEJO,
EDWARDO T. BALE,
YG'NO HIGUERRA.

Ass'a: JOSE DE LA ROSA,
CAYETANO JOARES.

GEORGE C. YOUNT.

Ynmediatam'te yo el juez digo, q. pa. proceder a las medidas en estos autos mande se notifique al C. Yount, el titulo de las tierras pa. que ratifique el nombram'te de medidor como, asi mismo q. de acuerto todos los colind'ts nombren pr. su parte al suyo habiendo de ser intelligentes en materia de medidas echo esta estoy *estoy* pronto a señalar dia pa. d'has medidas.

Asi lo provez, mande y firme, con los de mi ass'a.

SALVADOR VALLEJO.

Ass'a: Jose de la Rosa,
Ass'a: Cayetano Joares.

En el mismo dia, mes y año, yo el juez ley, y notifique el auto de su uso segun y como en el se contiene al C. Jorge Yount, y sus colindantes en sus personas q. conozco, y haviendolo hoido y entendido dijeron lo ollerron y entendieron y q. por su parte nombran medidos al C. Jacobo Primo Leese, y el interesado ratifico en nombram'te en el mencionado Santos Miguel, ambos inteligentes y de legalidad, aquienes se les notifico parezcan, acepten y juren y en su conformidad se proseda à d'has medidas como esta mandado. Asi lo firmaron ante mi y los de ass'a.

SALVADOR VALLEJO.

Ass'a: Jose de la Rosa,
Ass'a: Jacobo P. Leese,
Ass'a: Cayetano Joares,
Ass'a: Miguel de los Santos.

En el espresado pueblo à las once dias del mismo mes y año, yo el jues actuando pr. receptoria con dos testigos de ass'a pr. falta de escribano publico ley, y notifique el auto q. antesede de su hisso y nombram'te de medidores à los C. C. Jacobo Primo Lis y Santos Miguel, vecinos de este pueblo en sus personas q. conozco y haviendolo hoido y entendido dijeron q. aceptan el encargo de medidores q. se les confia, y juran à Dios y à la señal de la Cruz, en forma de d'ho q. husaran de su encargo fiel, y legalmente segun su leal saber, y entendor, y d'has medidas las bereficaran con fidelidad y exactitud, como es de su obligacion y á satisfacion de los interesados, y haviendolo asi respuesto lo firmaron con migo y los de mi ass'a.

SALVADOR VALLEJO.

Ass'a: Jose de la Rosa,
Ass'a: Jacobo P. Leese,
Ass'a: Cayetano Joares,
Ass'a: Miguel de los Santos.

Ynmediate se hizo saber el auto q. antecede à la parte interesado Jorge Yount, à los medidores C. C. Jacobo Primo Lis y Santos

Miguel, y entendidos, dijeron q. se dan pr. sitados y lo firmaron con el presente jues, y los de ass'a.

SALVADOR VALLEJO.

Ass'a: Jose de la Rosa,
Ass'a: Jacobo P. Leese,
Ass'a: Cayetano Joares,
Ass'a: Miguel de los Santos.

GEORGE YOUNT.

En el mismo dia, mes y año, se libraron boletas de comparendo, à los C. C. Eduardo Vale, pa. q. comparesca el proximo, dia doce en el mencionado rancho à las ocho de la mañana de este dia, y pa. constancia lo firme con los de mi ass'a.

SALVADOR VALLEJO.

Ass'a: Jose de la Rosa,
Ass'a: Cayetano Joares.

En el rancho de Caimy á los catorce dias de el mes de F'bro, del año de mil ochocientos cuarenta, y dos presente la parte interesada y circumvecinos a d'hos tierras hise comparecer, ante mi y los de assa. a los CC. Jacobo Primo Lis y Santos Miguel, medidores nombrados áquienes mande tomasen un cordel de Cañamo y midieron cien vs. cuatro palmos costellanos lo q. verificaron á vista, y presencia de los interesados y circumbecinos, y p'a q. conste mande se pouza pr. diliga. y se proseda à d'hos medidos como esta mandado lo certifico, asi mismo firmandolo con los de mi ass'a.

SALVADOR VALLEJO.

Ass'a: Jose de la Rosa,
Ass'a: Cayetano Joares.

Estando en el campo de las tierras pertenecientes al rancho de Caimy, hoy martes del mismo mes y año, yo el jues de esta jurisdiccion, actuando pr. receptoria con dos testigos de ass'a, pr. falta de escribano publico; presentes los CCss. Jacobo Primo Lis y Santos Miguel, nombrados pr. las partes interesadas y colind'tes made proceder à la medida de dos sitios de ganado mayor, al rancho de Caimy segun el titulo presentado, en cuyo obedecm'te principiaron à d'hos medidos comengando desde donde se hizo el primer reconocimiento tirando los cordeles al rumbo nnte. al sste. donde se contaron cinco mil vs. de sierra a sierra donde se purieron señales pa. poner á las mohoneras; desde esta medida se tiro *se tiro* el cordel tomando el rumbo este. al nnte., donde se medieron dies mil vs. de alli prosig'de al rumbo nnte. se medieron cinco mil vs. de sierra à sierra donde se pusieron otras señales en señal de q. alli se pondrian otras mohoneras. Quedando ya dos sitios de ganado mayor pr. todo lo cual en señal de verdadera posesion y ceremonial acostumbrado amanco piedras y llervas y tiro por los cuatro vientos, en manifestacion de su legal y legitima posesion y tormó pr. si, y pa. q. todo tiempo conste y reconoscan pr. terminos y linderos de sus tierras

los demas circumbecinos de ellas, y de haverse efectuado d'hos medidos quieta y pacificamente y sin contradiccion de ninguna personal lo piden pr. testimonio, y yo el referido jues con los de mi ass'a, lo doy de averse pasado como d'ho es; y q. las espresadas medidas han sido practicadas à todo el leal saber y entender de los médidores, segun depusieron sin dolo fraude ni engaño contra ninguna persona, y pa. mayor seguridad y ratificacion del juram'te q. tienen echo lo firmaron, conmigo y los de mi ass'a.

SALVADOR VALLEJO.

Ass'a: JOSE DE LA ROSA,
JACOB P. LEESE,
Ass'a: CAYETANO JOARES,
MIGUEL DE LOS SANTOS.

En vista de allarse concluido este esp'dte en consta haverse dado posecion juridica del rancho nombrado Caimy, à nueve leguas de este pueblo al C. Jorge Yount entreguele á la parte el original pa. los usos q. le combengan con los docum'tos q. espresa.

El C. Salvador Vallejo, com'dte militar de esta fron'ta y juez de esta jurisdiccion, actuando p'r receptoria con dos testigos de ass'a p'r falta de escribano publico, asi lo provez, mandé y firmé, á onse dias del mes de F'bro, de mil ochocientos cuarenta y dos.

SALVADOR VALLEJO.

Ass'a: JOSE DE LA ROSA,
Ass'a: CAYETANO JOARES.

STATE OF CALIFORNIA,
County of Sonoma.

I, John Hendly, recorder in and for said county, do hereby certify that these are a true and correct copy of the foregoing papers, relative to George Yount's farm, now on file in this office, and among the archives of land titles in the jurisdiction of Sonoma district, as turned over by the alcalde to this office.

In testimony whereof I hereunto set my hand and seal of office this 20th day of February, A. D. 1852.

[Place of the seal.]

JOHN HENDLY, *Clerk.*

Filed in office, May 28th 1852.

GEO. FISHER, *Sec'y.*

Sello Primero, Seis Pesos.

Habilitado provisionalmente por la administracion de la aduana maritima de Monterey, de la Alta California, para los años de mil ochocientos treinta y cuartro, y ochientos treinta y cinco.

FIGUERROA. A. RAMIREZ.

Revalidado para el bieneo de 1836 y 1837.

GUTIERREZ. A RAMIREZ.

Nicolas Gutierres, teniente coronel de caballeria permamente,
[SEAL.] comandante g'ral, ynspector y gefe superior politico interior del territorio de la Alta California:

Por cuanto Jorge de la Concepcion Yount, Mejicano naturalizado, ha pretendido para su beneficio personal y el de su fa-
D'ros 20 ps. milia el terreno que indica el diseño que obra en el espediente, practicadas previamente las diligencias y averiguaciones concernientes, segun lo dispuesto por las leyes y reglamentos, usando de *de* las facultades que me son conferidas en decreto de este dia, y a nombre de la nacion Mejicana, he venido en concederle el terreno mencionado, declarandole la propiedad de el por las presentes letras, á reserva de la aprobacion de la ex'ma diputacion y sujeto á las condiciones siguientes:

1a. Que se sometera à las que estableciere el reglamento que se ha de formar para la distribucion de terrenos valdios; y que entre tanto ni el agraciado ni sus herederos podran dividir ni enagenar el que se les adjudica imponer censo, vinculo franza, hipoteca no otro gravamen aunque se a por causa piadosa, ni pasarlo á manos muertas.

2a. Podra sercarlo sin perjudicar las travesias, caminos y servidumbres, destinandolo al uso y cultivo que mas le acomode pero dentro de un año à lo mas fabricará casa y estará habitada.

3a. Solicitara del juez respectivo que le de la posecion juridica en virtud de este despatcho por el cual se demarcaran á los linderos èn cuyos limites pondran algunos arboles frutales, ó silvestres de alguna utilidad.

4a. El terreno que se hace donaciones de dos sitios de ganado mayor, segun esplica el diseño que corre en el espediente. El juez que diere la posecion lo hara medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

5a. Si contraveniere à estas condiciones perderá su derecho al terreno y será denunciable por otro.

En consecuencia mandó que serviendole de titulo el presente y teniendose por firme, y valdero se tome razon de el en el libro que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey, à veinte y tres de Febrero, de mil ochocientos treinta y seis.

NICOLAS GUTIERREZ.

FR'CO DEL CASTILLO NEGRETE, *Scrio.*

Title.

Queda tomada razon en el libro que corresponde à fojas 94, señalado con el No. 91, y obra en la secretaria de mi cargo.

CASTILLO.

Monterey, Febrero 23, de 1836.

Dros. 10 ps.

Filed in office Dec. 31st, 1852. GEO. FISHER, *Sec'y.*

Translation of Exhibit A.

To the Justice of the Peace of the frontier:

I, George de la Conception Yount, resident of this jurisdiction, owner of the Rancho of Caimas, in the manner most favorable in law, before you appear and say, that as appears by the title which I present with the necessary solemnity and oath, I have in my said rancho two sitios de ganado mayor (two square leagues) within the boundaries described in the title which I transmit; and as it is necessary for me that it should in all time appear where they extend to, and if any of my neighbors trespass upon me, or I upon them, you will be pleased to order that the customary examinations of identity, view, and examination being previously made, and the colindantes summoned, the measurement of said land be proceeded to; for which purpose I appoint now and for when the time may arrive, for surveyor, citizen Santos Miguel, resident in this jurisdiction, versed in this matter of measurements; and let the others who may be interested appoint another surveyor on their part; and this being done, let him whom they may appoint, together with the aforesaid Santos Miguel by me appointed, appear, accept, and take the oath, and in conformity with it proceed to said measurement.

Wherefore I pray you, that admitting the aforesaid document, you will be pleased to order as I have requested; and this being finished, you will return said documents to me with the original examinations which may be made for the security of my right—this writing and whatever else may be necessery.

(Sig'd) GEORGE C. YOUNT.

In the pueblo of Sonoma, on the ninth day of the month of February, one thousand eight hundred and forty-two, before me, citizen Salvador Vallejo, military commandant and magistrate of this jurisdiction, this petition was read, and having been seen it was admitted with the documents mentioned in it; and I ordered that the colindantes being summoned, information be taken of identity, view, and examination of said lands, at which I am ready to assist personally.

I thus provided, ordered, and signed with those of my assistance.

(Sig'd) SALVADOR VALLEJO.

Assisting witnesses:

(Sig'd) Jose de la Rosa,

(Sig'd) Cayetano Juares.

In the aforesaid pueblo, on the ninth day of the same month and year, I, the aforesaid magistrate, with those of my assistants, in order to proceed to the information of identity, I caused to appear before me citizen Ignacio Higuera, resident of this jurisdiction, by occupation a farmer, of whom I received the oath which he made by God and the sign of the cross in due form of law, by which he promised to speak truth, and being asked for the description of the lands and places, terms and bounds pertaining to citizen Jorge Yount, he said, that he

has been a resident of this jurisdiction eight years, and he knows that the lands pertaining to said rancho are the property of said Yount; that he has cultivated said lands and his cattle have pastured on them; that he has seen and examined them on various occasions, and as proof of that which he has said, he is ready to go to said land with the magistrate and point out to him how far they extend; all of which he affirmed and ratified by the oath which he has made.

He declares that he is twenty-eight years old, and that the legal acceptations do not affect him; and he signed with me and those of my assistance.

(Sig'd) SALVADOR VALLEJO,
(Sig'd) YGNACIO HIGUERRA.

Assisting witnesses:
(Sig'd) JOSE DE LA ROSA.
(Sig'd) CAYETANO JUARES.

In continuation, I caused to appear before me and those of my assistance, citizen Ramon Mesa, and having caused him to take the accustomed oath he promised to speak truth; and being asked for the lands, places, terms, and boundaries pertaining to citizen George Yount, he said, that he has been for eight years a resident of this jurisdiction, and knows that the lands of said rancho are of the said Yount, and that he has cultivated them, and his cattle have pastured on them, and that he has seen and examined them on various occasions; all of which he affirmed and ratified.

He declared that he was twenty-five years of age, and that the legal exceptions do not affect him; and he signed (by a sign of the cross) with me and those of assistance.

SALVADOR VALLEJO,
his
RAMON ⋈ MESA.
mark.

Asstg. witnesses:
CAYETANO JUARES,
JOSE DE LA ROSA.

Being in the said rancho, on the tenth day of the month of February, one thousand eight hundred and forty-two, I, the magistrate, acting as a notary in virtue of my office, with two assisting witnesses, for want of a notary public, present the witnesses by me examined, citizen George Yount, owner of said lands, and citizens José de la Rosa and Cayetano Juares, the colindantes and neighbors, I proceeded to view and recognise the lands of said rancho, and for greater clearness mounting on horesback in company with all the parties and witnesses referred to, I ordered the above named (witnesses) to point to me the places, terms, and bounds, according to the signs they have declared in their depositions, and in conformity they led the way to the eastern

part where there is a hill, and having arrived at the point where this ends, and *the* said that from that place the lands of citizen Yount were to the west; they then went in that direction, viewing and examining, until they arrived at a sansalito (willow thicket) which they said were the fartherest places, terms, and bounds of said rancho, it being situated between the two sierras which run from south-southeast to north-northwest, the places of which I, the aforesaid magistrate, saw and examined, as also those of my assistance; the witnesses being examined, and the papers presented being compared with the aforesaid reconnoissance, the identification of the aforementioned lands proved to be certain, as said witnesses declared, and in testimony official record was made of it, and those of my assistance and others, who knew how, signed with me. I certify.

(Sig'd) SALVADOR VALLEJO,
(") EDWARD T. BALE,
(") GEORGE C. YOUNT,
(") YGNACIO HIGUERRA.

Assisting witnesses:
(Sig'd) Jose de la Rose,
(") Cayetano Juares.

Immediately afterwards, I, the magistrate, said, that for the purpose of proceeding to the measurements contained in these acts, I order that citizen Yount be notified that he may ratify the appointment of surveyor, and also that all the colindantes, by common consent, appoint one on their part, it being necessary that he should understand the business of surveying; and this being done, I am ready to designate a day for said measurements.

Thus I provided, ordered and signed, with those of my assistance.
(Sig'd) SALVADOR VALLEJO.

Ass'tg witnesses:
(Sig'd) Jose de la Rosa,
(") Cayetano Juares.

On the same day, month and year, I, the magistrate, read and notified the order referring to them, as herein contained, to citizen George Yount and his colindantes, in person, whom I know; and having heard and understood it, and they said that they heard and understood it, and that they (the colindantes) appoint, on their part, as surveyor, citizen Jacob Primo Leese, and the party interested ratified this appointment of Santos Miguel, both intelligent and competent, whom I notified to appear, accept and take the oath, and in conformity with it proceed to the aforesaid survey, as before ordered: and they signed before me and those of my assistance.

(Sig'd) SALVADOR VALLEJO,
(") JACOB P. LEESE,
(") MIGUEL DE LOS SANTOS.

Assisting witnesses—(Sig'd) Jose de la Rosa,
(") Cayetano Juares.

In the aforesaid pueblo, on the 11th day of the same month and year, I, the magistrate, acting and in virtue of my office, with two assisting witnesses, for want of a notary public I read and notified to citizens Jacob Primo Leese and Santos Miguel, in person, whom I know, they being residents of this pueblo, the order referring to them and their appointment of surveyors; and having heard and understood it, they said that they accepted the office of surveyors entrusted to them, and they made oath by God and the sign of the cross, in due form of law, that they would use their office faithfully and legally, to the best of their knowledge and understanding, and would verify the said measurements with fidelity and exactitude, as they are bound to do, and to the satisfaction of the persons interested: and having thus replied, they signed this with me and those of my assistance.

(Sig'd) SALVADOR VALLEJO,
(") JACOB P. LEESE,
(") MIGUEL DE LOS SANTOS.

Ass'tg witnesses:
(Sig'd) Jose de la Rosa,
(") Cayetano Juares.

Immediately afterwards I caused the foregoing order to be made known to the party interested, George Yount, to the surveyors, citizens Jacob Primo Leese and Santos Miguel; and having heard it, they acknowledged notice, and signed this with the present magistrate and those of assistance.

(Sig'd) SALVADOR VALLEJO,
(") JACOB P. LEESE,
(") MIGUEL DE LOS SANTOS,
(") GEORGE YOUNT.

Ass'tg witnesses:
Jose de la Rosa,
Cayetano Juares.

On the same day, month and year, written summons were issued to citizen Edwardo Bale, to appear in the before mentioned rancho tomorrow, the twelfth instant, at eight o'clock in the morning: and in testimony I signed it with those of my assistance.

(Sig'd) SALVADOR VALLEJO.

Ass'tg witnesses:
(Sig'd) Jose de la Rosa,
(") Cayetano Juares.

In the rancho of Caimas, on the fourteenth day of the month of February, one thousand erght hundred and forty-two, present the party interested and colindantes of said lands, I caused to appear before me and those of my assistance citizens Jacob Primo Leese and Santos Miguel, appointed surveyors, whom I ordered to take a hempen

rope and measure off one hundred varas of four Castilian palmas, which was done in view and presence of those interested and the colindantes; and in testimony I ordered that it be written down officially, and they proceed to said measurements, as has been ordered: and I thus certify to it, signing with those of my assistance.

(Sig'd) SALVADOR VALLEJO.

Ass'tg witnesses:
(Sig'd) JOSE DE LA ROSA,
(") CAYETANO JUARES.

Being in the fields on the lands pertaining to the rancho of "Caimas," this Tuesday of the same month and year, I, the magistrate of this jurisdiction, acting in virtue of my office, with two assisting witnesses, for want of a notary public, present citizens Jacob Primo Leese and Santos Miguel, appointed by the party interested and colindantes respectively, I ordered them to proceed to the measurement of two sitios de ganado mayor (two square leagues) in the rancho of "Caimas," according to the title presented; in obedience to which they began said measurements, commencing from where the first reconnoissance was made, drawing the cordel from N.N.E. to S.S.W., and measured five thousand varas from sierra to sierra, where marks were placed, for the purpose of putting up the bound from this measurement; the cordel was drawn from E.S.E. to N.N.W., to where they measured ten thousand varas; thence continuing N.N.E., they measured five thousand varas from sierra to sierra, where other marks were placed in sign, that other bounds would be placed there.

Two sitios de ganado mayor being now measured as a sign of true possession and accustomed ceremonial, he (Yount) pulled up stones and grass and threw them to the four winds, in manifestation of his legal and legitimate possession, which he in person took, and that they might in all time appear and be recognised by his neighbors as terms and bounds of his lands; and that these measurements were executed quietly and peaceably without contradiction by any person, he asked for this for a proof, and I, the magistrate, with those of my assistance, give it that all was performed as has been said; and that the aforesaid measurements have been made to the best of the knowledge and understanding of the surveyors as they deposed, without imposition, fraud, or deceit, against any person, and for greater security and the satisfaction of the oath which they have made, they signed this with me and those of my assistance.

(Sig'd) SALVADOR VALLEJO,
(") JACOB P. LEESE,
(") MIGUEL DE LOS SANTOS.

Asst'g witnesses:
(Sig'd) JOSE DE LA ROSA,
(") CAYETANO JUARES.

In view of having finished this espediente, in which it appears that juridical possession of the rancho named Caimas, nine leagues distant from this pueblo, has been given to citizen George Yount, let the original be delivered to the party for the uses he may find convenient, together with the documents mentioned therein.

Citizen Salvador Vallejo, military commandant of this frontier, and magistrate of this jurisdiction, acting in virtue of my office, with two assisting witnesses, in default of a notary public, thus provided, ordered, and signed, on the eleventh day of the month of February, one thousand eight hundred and forty-two.

(Sig'd) SALVADOR VALLEJO.
(Sig'd) JOSE DE LA ROSA,
(") CAYETANO JUARES.

OFFICE OF THE BOARD OF LAND COMMISSIONERS FOR CALIFORNIA,
ANGELES, *November 2d*, 1852.

I hereby certify the foregoing to be a true and correct translation of the Spanish original annexed to the deposition of Salvador Vallejo, in case No. 243, and on file in this office.

GEO. FISHER, *Sec'y*.

Filed in office, May 26th, 1852.

GEO. FISHER, *Sec'y*.

Translation of Title.

Stamp First, Six Dollars.

Provisionally authorized by the administration of the maritime custom-house of Monterey, in Upper California, for the years one thousand eight hundred and thirty-four and eight hundred and thirty-five.

(Sig'd) FIGUERROA. (Sig'd) A. RAMIREZ.

Revalidated for the two years 1836 and 1837.

(Sig'd) GUTIERREZ. (Sig'd) A. RAMIREZ.

Nicolas Gutierrez, lieutenant colonel of permanent cavalry, commanding general, inspector, and governor ad interim of the Territory of Upper California.

Whereas, George de la Conception Yount, a naturalized Mexican, has for his own personal benefit and that of his family, petitioned for the land shown on the map which exists with the espediente, the proper measures and examinations being previously made as required by laws and regulations, using the faculties which are conferred on me, I have in decree of this day, and in the name of the Mexican nation, granted him the aforesaid land, declaring to him the ownership of it by these presents, subject to the approval of the most excellent deputation, and to the following conditions:

[SEAL.]

1st. He shall submit to those conditions which the regulations may establish, which is to be formed for the distribution of vacant lands;

and in the mean time neither the grantee nor his heirs can divide or alienate that which is granted them; subject it to any tax, entail, pledge, mortgage, or other incumbrance, even for religious purposes, or convey it in mortmain.

2d. He may enclose it without prejudice to the crossings, roads, and servitudes, making such use or cultivation of it as he may see fit; but within one year at most he shall build a house on it and it shall be inhabited.

3d. He shall request the proper magistrate to give him the juridical possession in virtue of this title, by whom the boundaries will be marked out, in the limits of which he shall place some fruit or forest trees of a useful character.

4. The land of which donation is made is two square leagues, (sitios de ganado mayor,) as shown by the map which goes with the espediente. The magistrate who may give the possession, will cause it to be measured in conformity with the ordinance, leaving the surplus which may result to the nation for its convenient uses.

5. If he contravene these conditions, he will lose his right to the land, and it will be subject to denouncement by another person.

In consequence, I order that this present, serving him for a title, and being held as firm and valid, note be made of it in the proper book, and it be delivered to the interested party for his security and other purposes.

Given in Monterey on the twenty-third of February, one thousand eight hundred and thirty-six.

(Signed) NICOLAS GUTIERREZ.

(Signed) FRANCISCO DEL CASTILLO NEGRETE, *Sec'y.*

Note has been made (of this title) in the corresponding book, on folio 94, numbered 91, and exists in the Secretary's office, in my charge.

Monterey, February 23d, 1836.

(Sig'd) CASTILLO.

Filed in office, May 26th, 1852.

GEO. FISHER, *Sec'y.*

Opinion and Decree.

GEORGE C. YOUNT, claimant, vs. THE UNITED STATES. } U. S. Land Commission at San Francisco.—No. 243.

Opinion by H. J. Thornton.

The claim presented in this case is founded on a grant made in virtue of the Mexican decree of the 18th of August, 1824, and of the ordinance of 21st of November, 1828, for a tract of land called Caymas, of two square leagues, by Nicolas Gutierrez, governor of California, to the claimant.

The grant bears date on the 23d of February, 1836. It does not appear that any action was ever had by the territorial deputation upon

the grant of the governor. The land was measured, and possession thereof delivered to the claimant according to the use of the country at the time, in February, 1842, and the claimant has been for more than sixteen years in the peaceable and undisturbed possession of the same. The genuineness of the grant, and the authority of the grantor, are not disputed. All those facts appear in the case by regularly authenticated transcripts from the archives and by documentary and other evidence.

There is no objection urged against the validity of the claim, except such as have been considered and overruled by this board in the case of Cruz Cervantes, and of others heretofore decided according to the principles of decision prescribed for our government in the 11th section of the act of the 3d of March, 1851, creating this board.

We consider the claim valid, and proceed to enter a decree of final confirmation. In this result Commissioner Hall concurs.

HARRY J. THORNTON.

This board, upon full consideration of the various grounds affecting the validity of the said claim, having come to the conclusion that the same is valid: Therefore now proceeds to make, and does hereby make the following decree or report of final confirmation, viz: It is decreed that the said claim be confirmed to the claimant to the extent and quantity or two square leagues, or sitios de ganado mayor, and for no more, being the same land described in the grant and expediente referred to therein, and of which possession has been long held under the said grant by the grantee, provided that the said quantity of land granted and now here confirmed be contained within the boundaries called for in the said grant and map, to which the grant refers; and in case there be less than the said above-named quantity within the said bounds, then we confirm to the claimant that less quantity, it being apparent that said quantity exceeds the minimum of two hundred varas prescribed by the ordinance of the 21st of November, 1828.

HILAND HALL,
HARRY J. THORNTON,
Commissioners.

Filed in office, February 8th, 1853.

GEO. FISHER, *Sec'y.*

OFFICE OF THE BOARD OF LAND COMMISSIONERS

To ascertain and settle private land claims in the State of California.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing sixty-eight pages, numbered from 1 to 68, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 243, on

the docket of the said board, wherein George C. Yount is the claimant against the United States, for the place known by the name of Caymas.

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this eighth day of May, A. D. 1854, and of the independence of the United States of America the seventy-eighth.

[SEAL.]

(Signed) GEO. FISHER, *Secr'y*.

Notice of Appeal.

GEORGE C. YOUNT, claimant,
vs.
THE UNITED STATES. } No. 243.

ATTORNEY GENERAL'S OFFICE,
19*th August*, 1854.

You will please take notice, that an appeal in the above case (a transcript of the proceedings in which was received in this office on the 29th of May, 1854) from the decision of the commissioners to ascertain and settle the private land claims in the State of California, to the district court of the United States for the northern district of California, will be prosecuted by the United States.

C. CUSHING,
Attorney General, U. States.

Endorsed: Filed September 20th, 1854.
JOHN A. MONROE, *Clerk*.

Petition of Appeal.

To the Hon. District Court of the United States for the northern district of California.

THE UNITED STATES, appellants,
vs.
GEO. C. YOUNT, appellee. } No. 32.—Transcript No. 243.

The petition of the United States, by their attorney, represents that this cause is an application for a review of the decision of the board of commissioners, whereby the claim of the said appellee was confirmed, as appears by reference to the records in the case.

That a transcript of the said records was filed in this court on the 8th day of May, A. D. 1854; that a notice of appeal was filed on the 20th September, A. D. 1854, and that the land claimed lies in the said district.

That the said claim is invalid. Wherefore, appellants pray that the

said decision of the board be reversed, and that this court decree the said title to be invalid.

Respectfully,

(Signed) WM. BLANDING, *District Attorney*.

To be filed as of 27th June, 1855.

Endorsed: Filed June 27, 1855.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

Answer.

In the District Court of the United States in and for the northern district of California.

THE UNITED STATES
vs.
GEORGE C. YOUNT. } No. 32.

This respondent for answer to the petition filed in this case, answers and says:

That the land in said petition mentioned, lies in the northern district of California, and within the jurisdiction of this court.

But he denies that it is true as alleged in said petition, that his title to the said land is invalid, but avers that the same is valid, and prays that the decision of the board of commissioners confirming his claim may be affirmed, and that his title thereto may be decreed to be valid.

(Signed) THORNTON, WILLIAMS & THORNTON,
For Claimants.

Endorsed: Filed June 28th, 1855.

W. H. CHEVERS, *Deputy*,
For JOHN A. MONROE, *Clerk*.

Exhibit "A" to the petition of Geo. C. Yount.

Sello Primero, Seis Pesos.

Habilitado provisionalmente por la administracion de aduana maritima de Monterey, de la Alta California, para los años de mil ochocientos treinta y cuatro, y mil ochocientos treinta y cinco.

(Frd.) FIGUERO. (Firmado) A. RAMIREZ.

Revalidado para el bienio de 1836 y 1837.

(Firmado) GUTIERREZ. (Firmado) A. RAMIREZ.

Nicolas Gutierrez, Teniente Coronel de Caballeria, permamente Gen'l, Ynspector, y Gefe Superior Politico Interior del Territorio de la Alta California.

[Gobierno politico de la Alta California.]

Por cuanto George de la Concepcion Yount, Mejicano naturalizado, ha pretendido para su beneficio personal, y el de su familia el terreno

que indica el diseño que obra en el espediente, practicadas previamente las diligencias, y averiguaciones concernientes, segun lo dispuesto por las leyes y reglamentos; usando de las facultades que me son conferidas en dareto de este dia, y á nombre de la nacion Mejicana, he venido en concederle el terreno mencionado declarandole la propiedad de él, por las presentes letras, á reserva de la aprobacion de la ex'ma diputacion, y sugeto á las condiciones siguientes:

[D'ros 20, fr's.]

1a. Que se someterá a las que estableciere el reglamento que se ha de formar para la distribucion de terrenos baldios, y que entre tanto, ni el agraciado ni sus herederos podrán dividir ni enagenar el que se les adjudica imponer censo, vinculo, fianza, hipoteca, ni otro gravamen aunque sea por causa piadosa, ni pasarlo á manos muertas.

2a. Pordra cercarlo sin perjudicar las travesias caminos y servidumbres, destinandolo al uso ó cultivo que mas le acomode, pero dentro de un año á los mas fabricará casa y estara habitada.

3a. Solicitará del juez respectivo que le dé la posesion juridica en virtud de este despacho por el cual se demarcaran los linderos, en cuyos limites pondran algunos arboles frutales, ó silvestres de alguna utilidad.

4a. El terreno de que se hace donacion es de dos sitios de ganado mayor, segun esplica el diseño que corre en el espediente. El juez que diere la posesion lo hará medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

5a. Si contraveniere á estas condiciones perderá su derecho al terreno, y será denunciable por otro.

En consecuencia mando que sirviendole de titulo el presente y teniendose por firme, y valdero se tome razon de él en el libro que corresponde, y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey, à veinte y tres de Febrero, de mil ochocientos treinta y seis.

(Firmado) NICOLAS GUTIERR'Z.
(Firmado) FRO. DEL CASTILLO NEGRETE, *S'rio.*

Queda tomada razon en el libro que corresponde á fojas 94, señalado con el No. 91, y obra en la secretaria de mi cargo. Monterey, Febrero 23, de 1836.

(Firmado) CASTILLO.

[*For map see original, page* 65.]

I, George Fisher, secretary to the U. S. land commission to ascertain and settle private land claims in California, hereby certify the fore-

going to be a true and correct copy of a document in case No. 243, on the docket of said commission, wherein George C. Yount is the claimant vs. the United States, for the "Rancho de Caymas," which document is marked "A," and copy of title, and filed in this office May 26th, 1852, and was omitted in the transcript of the proceedings, &c., in said case, before said commissioner, heretofore filed in the U. S. district court for the northern district of California.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, (not having an official seal,) at the city of San Francisco, this 28th day of January, A. D. 1856.

(Signed) GEO. FISHER,
Sec'y.

Endorsed: Nunc pro tunc—Filed June 28th, 1855.

JOHN A. MONROE,
Clerk,
By W. H. CHEVERS,
Deputy.

Opinion delivered by Hon. Ogden Hoffman, U. S. Dist. Judge.

THE UNITED STATES }
vs. }
GEORGE C. YOUNT. }

The claim of the appellant *is* this case was confirmed by the commissioners, and now comes before this court on appeal by the U. S. No objections whatever to its validity are raised by the district attorney, nor is any reason suggested why it should not be confirmed.

The grant bears date on the 23d of February, 1836, and is two square leagues, as shown on the map which goes with the expediente. The land was accurately measured, and juridicial possession given with the formalities required by the usage of the country; and a copy of the record of these proceedings, on file among the archives of land titles in the jurisdiction of Sonoma district, is found in the transcript filed in this court.

All the conditions of the grant have been fully performed, and within the time limited; and ever since the date of the grant—1836—the claimant has continued to reside on his land, and has made extensive and valuable improvements upon it.

The genuineness of the grant is not disputed, and almost all the facts are proved by authenicated transcripts from the public archives.

We are unable, on an examination of the record, to discover any objection to the validity of this claim. A decree of confirmation must, therefore, be entered.

Endorsed.

Decree.

Appeal from the final decision of the Commissioners to ascertain and settle private land claims in California.

THE UNITED STATES
vs. } No. 32.
GEORGE C. YOUNT.

Stated Term—July 7, 1855.

This case coming on to be heard this day upon the petition and answer, and upon the certified transcript of the proceedings and decision of the board of commissioners on private land claims in California, and of the papers and evidence on which the same were founded, and the argument of counsel being heard: in consideration whereof the court is of opinion that the claim of the said George C. Yount is valid, and the same is hereby confirmed.

The land, of which confirmation is made, is known by the name of Caymas, and is of the extent of two square leagues, according to the map in exhibit "A" to the petition of said Yount before said board of commissioners, (copy of which is filed in the case,) being the same land of which juridical possession was given under the Mexican government, (copy of which proceedings is contained in said transcript,) and of which the said Yount is shown to have been in the possession and occupation ever since the date of this grant.

(Signed) OGDEN HOFFMAN,
U. S. District Judge.

Order granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Saturday, the seventh day of July, in the year of our Lord one thousand eight hundred and fifty-five. Present, Hon. M. H. McAllister, circuit judge, and the Hon. Ogden Hoffman, district judge.

THE UNITED STATES
vs. } No. 32.
GEORGE C. YOUNT.

In this case, on the application of the United States attorney made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court, rendered in said cause, at the present term, be, and the same is hereby granted; and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed 7th July, 1855.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

Certificate of the Clerk.

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed pages, from one to sixty-nine inclusive, contain a full, true, and correct transcript of the record on file from the board of land commissioners, together with the pleadings, depositions, orders and decrees, and opinion filed in this office, in the case entitled The United States, appell't, vs. George C. Yount, appellee.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, the 18th day of December, [SEAL.] in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the United States of America the eighty-first.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

SUPREME COURT OF THE UNITED STATES.

No. 196.

THE EXECUTORS AND HEIRS OF AGUSTIN DE YTURBIDE, DECEASED, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this sixth day of July, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petiton of the executor and heirs of Agustin de Yturbide for twenty leagues square of land was presented, and ordered to be filed and docketed with No. 281, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *December 24th*, 1852.

In case No. 281, the executor and heirs of Agustin de Yturbide for twenty leagues square of land, the deposition of Joseph Y. Simantour, a witness in behalf of the claimants, taken before Commissioner Hiland Hall, with documents marked H. H. Nos. 1 and 2, annexed thereto, was filed.

(Vide page 13 of this Transcript.)

In the same case, the deposition of José Abrego, a witness in behalf of the claimants, taken before Commissioner Hiland Hall, was filed.

(Vide page 15 of this Transcript.)

In the same case, the deposition of William Waln, jr., a witness in behalf of the claimants, taken before Commissioner Hiland Hall, was filed.

(Vide page 17 of this Transcript.)

SAN FRANCISCO, *October 3d*, 1854.

Case No. 281 was submitted on briefs, and taken under advisement by the board.

SAN FRANCISCO, *December* 19, 1854.

In the same case, Commissioner Alpheus Felch delivered the opinion of the board rejecting the claim.

(Vide page 67 of this Transcript.)

And the following order was made, to wit:

(Vide page 69 of this Transcript.)

Petition.

STATE OF CALIFORNIA, *ss.*

To the Hon'ble the Board of Commissioners of the Unied States for the settlement and adjudication of private land claims in California.

The petition of Don Hilario Elguero, executor of the last will and testament of Don Augustin de Yturbide, deceased, and of Doña Maria Huerte de Yturbide, the widow of the said Augustin de Yturbide, and of Don Augustin Geronimo de Yturbide, Angel de Yturbide, Salvador de Yturbide, Felipe de Yturbide, Augustin C. de Yturbide, Doña Sabina de Yturbide, and Josefa de Yturbide, the children, devisees and heirs-at-law of the said Augustin de Yturbide, deceased, respectfully showeth: That your petitioners are all residents and citizens of the republic of Mexico, except Doña Maria Huerte de Yturbide, Sabina de Yturbide and Josefa de Yturbide, who for the present reside in the city of Philadelphia, in the State of Pennsylvania, in the United States of North America. Your petitioners further show, that the said Don Augustin de Yturbide, deceased, at the time of his death, in the year 1824, was a citizen of the said republic of Mexico, and prior to his death, in the year aforesaid, executed and published his last will and testament in writing, in due form, according to the laws and usages of the said republic, and the said will has been duly probated in the proper court, at the city of Mexico, in the said republic. A certified copy of the said will, duly authenticated, is herewith filed, and referred to as part of this petition, and marked "Exhibit A;" also a translation thereof marked "Exhibit B." That two of the executors named in said will having died, and the third having renounced his said executorship, whereby there was a vacancy in the said executorship, your petitioner, Don Hilario Elguero, on the 22d day of September, in the year 1850, was duly appointed by the proper authority, in the said city of Mexico, dative executor of the said will, and by virtue of said appointment, now is the sole executor of said will, with full authority to execute the same, as will appear by a certified copy of the said proceedings herewith filed and marked "Exhibit C," and a translation thereof marked "Exhibit D." That besides the children hereinbefore named, the said Don Augustin de Yturbide, deceased, left at the time of his death two other children, to wit, Inana Yturbide and Jesus de Yturbide, who have since died intestate and unmarried, leaving their brothers and sisters aforesaid their heirs-at-law, and who have thereby succeeded to all their rights in and to the estate and succession of their deceased father. That by virtue of the will aforesaid, and of the laws, usages and customs of the said republic of Mexico, your petitioners have succeeded to, and are justly entitled to enjoy all the rights, titles and interests in and to all real estate which in any manner

appertained to the said Agustin de Yturbide, deceased, at the time of his death, or to his estate or succession since his death.

Your petitioners further show, that the said Augustin de Yturbide, for some years prior to his death, was a distinguished citizen of the republic of Mexico, and in the year 1821–'2, bore a conspicuous part in achieving the independence of his country; which up to that period, as is well known, had been a dependency of the Crown of Spain. Indeed it is a well known historical fact, that he was the chief author of the revolution which resulted in the independence of Mexico; and that by his skill, prudence and moderation, not less than by his personal prowess, he conducted the revolution to a successful issue, and established the new republic upon a firm basis.

Duly impressed with a profound sense of gratitude to Don Augustin Yturbide, as the author of his country's independence, the supreme government of Mexico, on the 21st day of February, 1822, by its decree of that date, in due form of law granted to him in "full ownership and property" the estate of the suppressed society of the inquisition, to the value of one million of dollars; and also "a tract of land of twenty leagues square, in the province of Texas, in the location he may deem most advantageous." By virtue of this decree, the said Yturbide was authorized at any time to locate the said land at such places as he might select in the then province of Texas. But before such location was made, and indeed shortly after the grant, the said Yturbide departed this life, leaving his family in a very destitute and helpless condition. In the meantime, the province of Texas having revolted from the government of Mexico, the supreme government of the said republic of Mexico, on the 18th day of April, 1835, by its decree of that date, in due form of law, ratified the prior decree of the 21st February, 1822, and authorized the executor and heirs of the said Yturbide to locate the said twenty leagues square in the territories of New Mexico or in Upper and Lower California, (if it could not be had in Texas,) on such terms as the government might agree upon with the parties interested. For several years subsequent to the decree of the 18th April, 1835, the said republic was in a very unsettled condition, being distracted with intestine broils, and the family of the said Yturbide was in very straitened circumstances, and without the necessary means to perfect the selection, survey, and location of said lands; and in the year 1840 or 1841, Don Juan Gonez Navarete, then the sole acting testamentary executor of the said Augustin de Yturbide, deceased, petitioned the supreme government of Mexico for authority to locate the whole of said lands in Upper California, which petition was granted, and the said lands authorized to be so located by a decree of the said supreme government in one of the years last aforesaid. The said petition, however, and the decree in response thereto, cannot now

be found amongst the archives of the Mexican government, and it is believed they were lost or abstracted whilst the city of Mexico was in possession of the American army in the year 1847. At all events your petitioners charge that there were such documents, and that there was a valid and formal decree of the said supreme government, authorizing such location in Upper California, as will be made abundantly manifest by other official documents hereinafter to be mentioned.

Your petitioners further show, that on the 19th day of May, 1845, the said Navarete, still continuing to act as the testamentary executor of the said Yturbide, presented his petition of that date to the supreme government of Mexico, reciting that on the 20th day of February, 1841, he had been duly notified by the minister of the interior, that his prior petition, asking permission to locate said land in Upper California, had been granted, and that the widow and heirs of said Yturbide were anxious to proceed without delay to locate the same, in pursuance of said authority, but up to that period had been prevented from doing so by the want of the necessary means; that one of the said heirs, having then recently completed his 25th year, proposed to proceed immediately to Upper California to select the said lands, and have the same surveyed and located, provided he could be furnished with a sum of money sufficient to defray the expense thereof; to which end he prayed that the necessary orders might be issued to the governor of Upper California for the survey and location of the land, and that the sum of two thousand dollars might be paid to the estate on account of the one million of dollars due to it from the government under the decrees of the 21st February, 1822, and the 18th April, 1835, so that the widow and heirs might be able to defray the expenses of the survey and location of said lands.

On the fifth day of June, 1845, the minister of foreign affairs, goverment, and police, in an official communication of that date to the said Navarete, informed him that his petition of the 19th May was granted, and that on that day the necessary orders had been despatched to the governor of Upper California, directing him to cause to be surveyed the twenty leagues square, at such places in the vacant lands of the department of Upper California as the said Salvador de Yturbide might point out; and also that the supreme government had authorized the said sum of $2,000 to be advanced to defray the expenses of the survey, as asked for. On the same day, to wit, the 5th June, 1845, the said minister of foreign affairs, government and police, addressed an official communication to Pio Pico, then the governor of Upper California, informing him that Don Salvador de Yturbide, son of his excellency Don Augustin de Yturbide, was about to visit Upper California, in order to receive for himself, and in the name of his mother and brothers, the 400 square leagues of land which the

decree of the 18th April, 1835, granted to his family as a recompense for services rendered by Don Augustin de Yturbide for having achieved the independence of his country, and instructing the said governor to proceed to the survey of the said lands on such parts of the vacant lands of the territory as might be satisfactory to said Salvador. In reply to this communication, Pio Pico, then governor of Upper California, addressed an official communication, under date of the 20th October, 1845, to the minister of foreign relations, government and police of the republic of Mexico, acknowledging the receipt of the former communication, and promising that on the arrival of the said Salvador in Upper California he (the governor) would immediately proceed with the said survey on such of the vacant lands of the territory as might be satisfactory to the said Salvador; all of which will more fully appear by reference to certified copies of the said decrees of the 21st February, 1822, and the 18th April, 1835; the petition of the said Navarete of the 19th May, 1845; the reply of the minister of foreign relations thereto, under date of June 5th, 1845; the official communication of the said minister of the same date to the governor of Upper California, and the reply of the said governor thereto under date of 20th October, 1845, which are herewith filed as parts of this petition, and being attached together in one file, are marked "Exhibit E," and to translations thereof, also filed herewith, and marked "Exhibit F."

Your petitioners further show, that in the month of July, 1845, immediately after the order was issued to the governor of Upper California to cause the said lands to be surveyed, the said Salvador de Yturbide set out from the city of Mexico, for the purpose of visiting Upper California, with a view to select and locate the said lands; but being then attached to the army of Mexico, and an officer in actual service, whilst on his journey a revolt broke out in one of the Mexican provinces, whereupon he was recalled to the capital and sent upon military duty, whereby his contemplated journey was for the time being defeated. In the following year he again attempted to reach Upper California, for the sole purpose of perfecting the said location and survey, and had actually proceeded on his journey as far as the city of Tepic—a distance of about six hundred miles—when he was again recalled in consequence of a sudden revolt against the government at the city of Mexico. About this period, also, the war broke out and hostilities commenced between the republics of Mexico and the United States, and very soon thereafter Upper California was in the possession of a military force of the latter government, thereby precluding all efforts on the part of said Salvador, or those jointly interested with him, to cause the said lands to be located and surveyed. The events which subsequently transpired in California are matters of history, and need not be recited in this petition.

Your petitioners further show, that their delay in locating and causing the said lands to be surveyed, since the decree of 1841, authorizing the location in Upper California, has resulted solely from the causes hereinbefore recited, and not from any purpose to abandon their said claim; on the contrary, nothing but a want of the necessary means to defray the expenses of the survey prevented them from proceeding therewith, immediately after obtaining the decree of 1841; and so soon as the supreme government in 1845 obviated this difficulty by advancing the necessary sum, they took the necessary steps to commence and perfect the survey as hereinbefore recited, and were only prevented from proceeding therewith by causes over which they had no control, as is hereinbefore set forth.

Your petitioners further show, that there are large quantities of vacant and unappropriated lands within the State of California, not claimed by or justly belonging to any private individual, on which vacant and unappropriated lands your petitioners' claim ought in equity and justice to be located. They charge that, except for the cession of Upper California to the United States, their grant would long since have been perfected into a perfect title by the survey and location of the land, which was all that remained to be done at the date of the treaty of Guadalupe Hidalgo, and that, according to the laws, usages and customs of the Mexican government, their said title could and would have been so perfected if California had remained a province of Mexico. They claim, therefore, that their rights are protected by the said treaty, and by the law of nations, and having, as they conceive, the strongest possible claim upon the equitable consideration of your honorable board, they respectfully pray that their said title may be confirmed, and that your honorable board will direct the said lands to be located and surveyed upon the vacant and unappropriated lands within the State of California, provided the location thereof as hereinafter mentioned shall be held to be invalid. Having been prevented, by the causes hereinbefore recited, from locating said lands prior to the treaty of Guadalupe Hidalgo, and being authorized by the very terms of the grant to locate the said lands on any vacant lands of the government in Upper California, which your petitioners might select, they have proceeded to locate the same, since the said treaty, upon the following tract, situated on the west bank of the Sacramento river, and bounded as follows, to wit: beginning at the mouth of the Putah creek on the west bank of the Sacramento river; thence with the meanders of Putah creek, in a northwesterly direction to Clear lake; thence with the eastern margin of said lake to the extreme northern end of said lake; thence due north to the foot of the mountain called and known as the Coast range; thence with the foot of the said Coast range, in a northeasterly direction to the forty-first parallel of north latitude; thence due east with said parallel

of latitude to the Sacramento river; and thence with the meanders of said river to the place of beginning; containing four hundred square leagues in superfice, equal to twenty leagues square. They have caused a map or diagram of said lands to be made, which represents accurately and fairly the locality and description of said lands, and which is herewith filed and marked "Exhibit G," and is prayed to be taken as part of this petition.

The lands claimed by your petitioners are designated on said map or diagram by red lines, and are marked thereon as the "Yturbide claim." Your petitioners state, that the said lands are not covered by any other Mexican or Spanish grants, and at the date of the treaty of Guadalupe Hidalgo were a part of the public domain; and that no one else claims the same or any part thereof, by virtue of any right or title derived from the Mexican or Spanish governments. Your petitioners pray, therefore, that they may be confirmed in their title to the said lands so designated on the said map, and if it shall hereafter appear that the said lands, or any part thereof, have been granted to others by the Mexican or Spanish governments, prior to said location by your petitioners, in that event, they pray that they may be permitted to locate enough to make up the deficiency upon some other part of the public domain, in the State of California. They pray for such other and further relief as their case may require, and as may be consistent with equity and justice.

(Signed)
WALKER, CROCKETT, WELLS & BAKER,
Att'ys for Claimants.

Filed in office July 6th, 1852.
(Signed) GEO. FISHER,
Secretary.

Deposition of J. Y. Limantour.

San Francisco, *Dec'r 24th*, 1852.

On this day, before Com'r Hiland Hall, came Joseph Y. Limantour, a witness in behalf of the claimants, executor, and heirs of Agustin Yturbide, petition No. 281, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to inquiries by counsel for the claimant the witness testified as follows:

My name is Joseph Yves Limantour, my age is thirty-nine years and upwards, and I reside in the city of Mexico.

I am acquainted with the family of the late Agustin Yturbide, who was formerly Emperor of Mexico; I knew five of his sons; they are Agustin, Angel, Salvador, Felipe, and another son by the *same* of Agustin, the oldest and youngest sons being both named

Agustin; they are all over twenty-one years of age. They were always reputed and understood to be the sons of the late emperor. I have known Salvador ever since the year 1845. He is now here present. In 1845 Salvador started from Mexico for California to locate a large tract of land which was claimed under a grant from the government of Mexico to the heirs of the said Emperor Iturbide. He started in company with General Inistra, who had been appointed governor of California, and with others, and I was one of the party. On our way to Acapulco to embark for California, we were stopped at Iguala by a revolutionary party against the Mexican government, and prevented from going further. The journey was abandoned in consequence. Salvador was appointed a commissary for Upper California, and he could not have prosecuted the journey unless accompanied by the general and the force under him.

A paper is now shown me purporting to be a letter from the Secretary of State of Mexico, directed to Juan G. Navarrete, dated 5th June, 1845. I am acquainted with the handwriting and signature of Cuevas, former Secretary of State of Mexico, and I believe his signature upon said letter to be genuine. Said paper is hereto attached and marked H. H. No. 1. Cuevas was Secretary of State of Mexico at the date of said letter.

A paper is also shown me purporting to be a letter from Peña y Peña, minister of foreign relations of Mexico, to Juan G. Navarrete, dated 28th of November, 1845. I am acquainted with the handwriting and signature of Peña y Peña, and believe his signature to said letter to be genuine. I know he was acting as minister of foreign relations at the date of said letter. Said paper is hereto annexed and marked H. H. No. 2.

LIMANTOUR.

Sworn and subscribed before me.

HILAND HALL,
Com'r.

Filed in office Dec'r 24th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Jose Abrego.

San Francisco, *Dec'r 24th*, 1852.

On this day, before Com'r Hiland Hall, came José Abrego, a witness in behalf of the claimants, executor and heirs of Agustin Yturbide, petition No. 281, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to inquiries by counsel for the claimant, the witness testified as follows:

My name is José Abrego, my age is forty years, and I reside at Monterey, in California.

I am acquainted with the handwriting and signatures of Cuevas, formerly minister of foreign relations of Mexico, and of Peña y Peña, formerly holding the same office. Two papers which are attached to the deposition of Joseph Yves Limantour, this day taken in this case, are showed me, and I believe the signatures of said persons appearing respectively on said letters are their genuine signatures. I held the office of commissary in California, and had official communications from both of them.

In 1845, being at that time commissary in California, I received a communication from the minister of foreign relations of Mexico, informing me that Salvador Iturbide, having lands to attend to in California, had received the appointment of commissary, and requiring me, on his arrival, to deliver over the papers of the office to him. The communication was dated in the early part of the year 1845. The letter stated that he was coming here to select and take possession of land that had been granted to the heirs of his father by the Mexican congress. I left the letter in the government archives at Monterey.

JOSÉ ABREGO.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Dec'r 24th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

Deposition of Wm. Waln.

SAN FRANCISCO, *Dec'r 24th*, 1852.

On this day, before Com'r Hiland Hall, came Wm. Waln, jr., a witness in behalf of the claimants, executor and heirs of Agustin Yturbide, petition No. 281, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was present.

In answer to inquiries by counsel for the claimants, the witness testified as follows:

My name is William Waln, jr.; my age is thirty-six; and I reside in San Francisco.

I was a resident in Philadelphia two years ago. I knew the family of Madam Yturbide, reputed to be the widow of the late Emperor Yturbide, then and for some years previous residing in that city. She had living with her two daughters, Sabina and Josephine, reputed and believed to be the daughters of the late Emperor Yturbide. They were young women, and must have been

over twenty-one years of age. She had several sons, the eldest of whom I have heard called the prince.

WM. WALN, Jr.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Dec'r 24th, 1852.
(Signed) GEO. FISHER, *Sec'y.*

Exhibit A.

En el nombre de la Santisima Trinidad: Padre, Hijo y Espiritu Santo, tres personas distintas, y un solo Dios verdadero, de Jesu Cristo Miestro Señor, de su Madre, la Santisima Virgen Maria y de todos los Santos y Espiritus bienaventurados, bajo cuya proteccion y amparo quiero vivir y morir, Hago notorio á todos aquellos á quienes convenga, como yo Dn. Agustin di Yturbide estando sano y en mi entero acuerdo, seguro de la infalibilidad de la muerte, é inciesto de la hora y circunstancias en que pueda sobrevenirme, quiero manifestar mi ultima voluntad y testamento, en esta carta simple, sin las formalidades comunes del derecho, en uso del privilegio que gozamos los militares, para que todo cuanto en el, se cumpla exacta y prontamente por los albaceas testamentarios que adelante nombraré, como si fuese un instrumento estendido con todos los requisitos de estilo.

Declaro que soy Catolico, Apostolico, Romano, en cuya comunion deseo morir para salvacion de mi alura. Mi cuerpo quiero sea sepultado sin pompa alguna, aunque si mando se hagan sufragios para mi descauso eterno. Se pagarán las mandas forzosas, si aun hubiere custumbre de cumplirlas. Declaro que he sido casado in facie ecclesiae con Doña Maria Huarte, en cuyo matrimonio hemos habido y criado por hijos legitimos a Agustin, Sabina, Juana, Josefa, Angel, Jesus, Salvador y Felipe, y estando actualmente mi muger en ciuta, el hijo que naciere será nuestro. Declaro que soy duedas de varias cantidades de pesos en Mexico mi Patria, mas habiendo contraido las mas de estas duedas cuando estuve á la cabeza de la nacion, por su mismo decoro, y dijando al Loberano Congreso, á mi salidu del territorio el año procsimo pasado, una nota de todas ellas, creo que habra mandado pagarlas. Declaro que tengo cuentas pendientes con las casas de Gower y Sobrinos, y Mateo Fletcher, en Londres, las que liquidadas espero seran satisfichas por mis albaceas. Declaro que para la compra de la hacienda de Apeo, jurisdiccion de Maravateo, de que soy dueño, tome de la dote y legitima de mi muger, mas de treinta y dos mil pesos, lo que podrá saberse á puerto fijo por los libros y cuentas de la casa de mi padre politico Dn. Ysidoro Huarte, lo que declaro para que decha suena se saque con preferencia de la hacienda de la compañia, jurisdiccion de Chaleo, en la que introduje nuebles e hizo mejoras de que debe resultarme utilidad. Mis albaceas to-

maran cuentas á los administradores e ynterventores, y pagardo lo que se deba, el resto, si lo hubiere, se aplicará al cuerpo de mis bienes. Declaro que habiendo el gobierno provisional de Mexico, despues que hize su Yndependencia, concedidome en premio un millon de pesos, y veinte leguas cuadradas de tierra en Texas, de lo que hasta ahora nada he percibido, quiero que mis albaceas representur en este puerto mis derechos; y hagan todas las gestiones que crean convenientes para lograr el puntual cumplimiento de esta asignacion, la que aplicarán al cuerpo de mis bienes. Declaro que el quinto del caudal que quedare liquido, es mi voluntad se destine á mantener, hasta que tomen estado, las dos Huerfanas, Justa y Antonia, que quedaron en Mexico, al pago de varias pensiones y limosnas que alli mismo se han hecho por disposicion mia, al cumplimiento de varios comunicados que dijé al licenciado Don Juan Gomez Navarrete, al sostenimiento de mis sobrinos, y todo lo demas á beneficio de mi amado y venerado padre, el Señor Don Joaquin de Yturbide. Del resto de todos mis bienes, derechos y acciones, nombro é instituyo por herederos á mis ya mencionados hijos y al postumo que hubiere de nacer, para que por partes iguales disfruten lo que haya de tocarles, con la bendicion de dios y la mia. Nombro por tutor y curador ad litem de mis hijos menores á su madre y mi esposa, Doña Ana Maria Huarte, y por albaceas testamentarios ó ejecutores, de esta mi ultima voluntad al licenciado Don Juan Gomez Navarrete, á Don Nicolas Carillo, vecinos de Mexico, y al presbitero Don José Antonio Lopez, que esta en compañia, para que uno despues del otro ejerzan este encargo, en el orden que van nombrados, rogandoles el quieran aceptarlo. Les suplico tambien y encargo la consciencia, asi como á mi esposa, á fin de que mantengan á mis hijos en las casas de educacion, adonde los dejé, hasta que la reciban completa, y que en su tiempo pongan en otras semejantes, á los mas pequeños. Finalmente revoco y aunto cualquiera otra disposicion que antes de esta hubiere dado ó hecho, y declaro que esta es mi ultima voluntad, la que deseo tenga su entero complimiento, en fé de lo cual firmo esta á bordo del bergantin Spring, á doce de Julio de mil ochocientos veinte y cuatro.

(Firmado:) AGUSTIN DE YTURBIDE.

El original de esta carta testamento se halla en poder del ciudadano Antonio Gonzales de Paredes, alcalde de primera nominacion de la villa de Muestra Señora de Consolacion de Soto la Marina, Estado de Temaulipas.

La copia que antecede es igual á la que existe en mi poder como albacea del Sr. Don Agustin de Yturbide.

JOSÉ H. ELGUERO.

Mexico, Mayo 27 de 1852.

LEGATION OF THE U. STATES AT MEXICO.

I certify that the signature of José H. Elguero to the foregoing document is genuine, the same having been acknowledged before me.

Mexico, May 27th, 1852.

R. P. LETCHER, *E. E., M. P.* [L. S.]

Filed in office July 6th, 1852.

(Signed) GEO. FISHER, *Sc'y.*

Exhibit B.

Translation.

In the name of the Most Holy Trinity, Father, Son, and Holy Ghost, three persons separate and one only true God; of Jesus Christ, our Lord; of his Most Holy Mother, the Virgin Mary; and of all the saints and spirits blessed, under whose protection and favor I desire to live and die, I hereby make known and publish to all to whom this may come, that I, Don Agustin de Yturbide, being healthy in body, and of sound mind, sure of the certainty of death, but uncertain as to the hour and circumstances under which it may overtake me, desire to make manifest my last will and testament in this plain instrument, without the usual formalities of law, by virtue of the privilege which we military men enjoy, in order that each and every disposition I may therein make may be strictly carried out, (executed,) and without delay, by the testamentary executors, whom I shall hereafter name, in the same manner as if this were an instrument drawn out with all the usual formalities of law.

I declare that I am a member of the Roman Catholic Apostolic Church, in whose communion I wish to die, for the salvation of my soul. My body I desire may be buried without any pomp, although I order that masses may be said for my eternal repose. These indispensable charges shall be paid for, even if it has been the custom to perform them as a matter of course.

I declare that I have been married "in facie ecclesiæ" with Doña Maria Huarte, by which marriage we have the following legitimate children: Agustin, Sabina, Juana, Josefa, Angel, Jesus, Salvador, and Felipe, and my wife being at this time "enceinte," the child that will be born will be ours.

I declare that I am indebted various sums of money in Mexico, my country; but having contracted the greater part of these debts when I was at the head of the nation, in the promotion of her glory, and having left in the hands of the sovereign Congress, on my departure from the territory the year last past, a list of all these debts, I believe they have been ordered to be paid.

I declare that I have accounts open with the houses of Gower & Nephews and Mathew Fletcher, of London, which, when liquidated, will be satisfied by my executors.

I declare that for the purchase of the hacienda of Apeo, in the jurisdiction of Maravatéo, of which I am the owner, I took from the dower and private fortune of my wife more than thirty-two thousand dollars, the precise amount of which can be ascertained by the books and accounts of the house of my father-in-law, Don Ysadoro Huarte; which declaration I make in order that said sum may be preferred and first drawn from the hacienda, and not be mixed up with my property.

I declare that I have held under lease the hacienda de la Campañia, in the jurisdiction of Chalco, in which I placed furniture and made improvements which must result profitably. My executors shall have a settlement with the administrators and intervenors, and that which is due being paid, the rest, if any, shall be carried to the bulk of my estate.

I declare that the provisional government of Mexico, after I achieved her independence, granted me in recompense a million of dollars and twenty leagues square of land in Texas, of which I have received nothing up to this time. I desire that my executors shall represent my rights in this respect, and shall take all the steps that they may deem proper to procure the punctual execution of this said grant, which they will add to the general fund of my succession, (the body of my property.)

I declare it to be my will that one-fifth of my liquidated property shall be set apart for the maintenance, until they are established, of the two orphan girls, Justa and Antonia, who shall remain in Mexico at the charge of the several pensions and settlements which were made by my disposition, for the execution of the various trusts which I left with the attorney, Don Juan Gomez Navarete, for the support of my nephews, and all the balance for the benefit of my beloved and venerated father, Don Joaquin de Yturbide.

Of the rest of my property, rights, and actions, I appoint and institute as heirs my before-mentioned children and the posthumous one yet to be born, in order that they may enjoy, share and share alike, the which may remain to be divided among them, with the blessing of God and my own.

I appoint as tutor and curator ad litem of my minor children, their mother, my wife, Dona Ana Maria Huarte; and for testamentary executors and administrators of this my last will, the attorney D. Juan Gomez Navarete, Don Nicolas Carrillo, citizens of Mexico, and the priest Don José Antonia Lopez, who is a member of a brotherhood, in order that one after the other may exercise this trust, in the order in which they are named, entreating them to be pleased to accept it.

I entreat them as well, and I appeal to their honor, as to my wife, to keep our children in the educational establishment where

I left them until their studies are completed; and that at the proper time they place the younger ones in similar establishments.

Finally, I revoke and annul whatever other will before this I may have given or made, and declare this to be my last will, that which I desire shall be strictly executed.

In testimony whereof, I sign these presents, on board the brig Spring, this 12th day of July, 1824.

(Signed) AGUSTIN DE YTURBIDE.

The original of this letter testamentary is in the possession of Antonio Gonzalez de Paredes, alcalde of first instance of the town of our Lady of Consolation of Soto la Marina, in the State of Tamaulipas.

The preceding copy is word for word with the one in my possession as executor of Don Agustin de Yturbide.

(Signed) JOSÉ H. ELGUERO.

Mexico, May 27, 1852.

{Legation of the United States at Mexico.}

LEGATION OF THE U. S. AT MEXICO.

I certify that the signature of José H. Elguero to the foregoing document is genuine, the same having been acknowledged before me.

Mexico, May 27, 1852.

(Signed) R. P. LETCHER,
E. E., M. P.

Filed in office July 6th, 1852.

(Signed) GEO. FISHER,
Secretary.

Exhibit C.

[Eagle.]

Sello Segundo—Cuatro Pesos.

Escrito.

Agustin de Yturbide ante V. como mas haya lugar en derecho, digo: que en disposicion testamentaria mi padre el Señor Don Agustin de Yturbide, nombro como Albacea primero, segundo y tercero, a los Senores Licenciado Don Juan Gomez de Navarrete, Don Nicolas Carrillo, vecino de esta capital, y Presbitero Don José Antonio Lopez: y que habiendo fallecido el primero de los mencionados Albaceas, y hecho el segundo renuncia verbal del cargo, queda la testamentaria sin representacion ninguna. A. V. hago formal declaracion de lo espuesto esperando, y pidiendole, se sirva nombra de Albacea dativo para la ejecucion de la ultima voluntad del Señor mi Padre, a quien tubiero a bien, y ademas digo: que los papeles de la testamentaria de mi Padre se hallan actualmente en

poder de la Señora Doña Luisa Cacho, vinda del firado Señor Don Juan Gomez de Navarrete. Juro lo necesario.

A. DE YTURBIDE.

Auto.

Mexico, Setiembre dies y nueve de mil ochocientos cincuenta.—Hagase saber el contenido de este escrito al Señor Don Nicolas Carrillo y con lo que diga dese cuenta. Lo proveyo el Licenciado Don Antonio Madrid, jues de lo civil de esta ciudad, y firmo. Doy fé: Madrid.

JERMIN VILLA,
Esem'o.

Notoriedad.

En veinte del mismo presente el Señor Don Nicolas Carrillo, le hizo saber el escrito anterior y entendido dijo: que en efecto ha renunciado el albaceargo del Señor Don Agustin de Yturbide, por que sus enfermedades no le permiten desempeñarlo como corresponde, por lo que si fuere necesario ratifica, en forma la espresada renuncia, y firmo. Doy fé: N. Carrillo.

JERMIN VILLA.

Auto.

Mexico, Setiembre veintierno de mil ochocientos cincuenta.—Se admito al Señor Don Nicolas Carrillo, la renuncia que hace del cargo de albacea del Señor Don Agustin de Yturbide, y en consecuencia se le nombra en clase de dativo al Señor Licenciado Don Hilario Elguero, a quien se le hara saber para que aceptando, jurando y afianzando el cargo, se le desierna en forma. Lo proveyo el Señor juez y firmo. Doy fé: Madrid.

JERMIN VILLA.

Acceptacion Juramento y Fianza.

En la ciudad de Mexico a veintiseis de Setiembre de mil ochocientos cincuenta, presente el Señor Licenciado Don Hilario Elguero, le hize saber el auto anterior y entendido, dijo: lo oye, acepta el cargo de albacea—

Sello Cuartro—Un Real.

{ Para los Anos [Eagle] de 1852 y 1853. }

—dativo del Señor Don Agustin de Yturbide, y jura en forma de derecho que procedera a desempeñarlo fiel y legalmente, llebando cuenta y razon de todos los bienes que entrar en su poder para rendirla con pago tan luego como se le mando por juez competento, practicando ademas todos los actos y diligencias propias de dicho cargo, sin que por su negligencia le venga perjuicio a la testamen-

taria, pues si le acueciere se lo remplazara con sus bienes; y a que asi lo cumplira produce por su fiador al Señor Don Jn. Ramon Malo, de esta vecindad, que es presente, y a quien doy fé conozco, el que cierto y sabedor de sus derechos y de lo que en el casa aventura, otorga: que sale y fia al espresado Señor Elguero, en tal manera que cumplira enteramente con lo que tiene ofrecido, y en su defreto lo hara el Señor Otorgante como su fiador, principal dendor, liso y llano pagador que se constituye, haciendo como hace de causa, denda, y negocio ageno suyo propio, sin que contra el Señor Elguero, ni sus bienes sea necesario hacer ni que se haya agencia, diligencia, ni esension, de fuero ni de derecho cuyo beneficio espresamento renuncia con las leyes que del caso tratan. A cuyo complimiento, ambos principal y fiador, se obligan con sus bienes habidos y por haber con las sumiciones y renunciaciones de leyes necesarias; y asi lo otorgaron y firmaron siendo testigos Don Mariano Cabeza de Vaca, Don Miguel Aristegin, y Don Juan Villa, de esta vecindad: doy fé.

JOSÉ H. EGUERO,
JOSÉ R. MALO,
JERMIN VILLA.

Discernim'to.

En la ciudad de Mexico a veinte ocho de Setiembre de mil ochocientos cincuenta. El Señor Don Antonio Madrid, juez de letras de lo civil en esta ciudad, en vista de la aceptacion, juramento y fianza que anteceden, dijo; que en nombre de los supremos padres de la nacion discernia y discernio al Señor Licenciado Don Hilario Elguero, el cargo de Albacea, dativo del Señor Don Agustin de Yturbide, y un consecuencia le daba, y dio, el poder y facultad que por derecho se requiere y es necesario, para que recoja los bienes pertenecientes a la testamentaria, llevando cuenta y razon de los que entren en su poder para vendirla con pajo luego que se le mande haciendo cuentas gestiones, actos y diligencias competen a los de su clase, y defendiendola.

Sello Cuartro—Un Real.

{ Anos de (Eagle) 1852 y 1853. }

En todos los pleitos, causas y negocios civiles ó criminales que tenga, ó tubiere, como actora, ó res, para lo que comparezca en los tribunales, y juzgado que convenza, en los que haga pedimentos, requirimientos, citaciones, protestas, alegaciones, contradicciones, ejecuciones, embargos, depositos, y desembargos de bienes, venta y remate de ellos, de que tome posecion; presente testigos y documentos que saque de quien los tutiere, gane todo genero de despachos; riga autos y sentencias interlocutorias y difinitivas; consienta lo favorable, y de lo contrario apele y suplique, siga su grado

ó se desistu, recuse, jure, y se aparte; y finalmento haga todos los demas *demas* actos, pedimentos, agencias, y diligencias, que importen, pues para ello lo anecso incidente y dependiente le hace este descernimiento, con libre, franca, general administracion, y facultad de enjuiciar, jurar, y dar poderes bajo su responsibilidad, para cuya mayor validacion y firmiza interpuso su autoridad y judicial decreto, en cuanto ha lugar por derecho; y mando se le den al Señor Albacea, los testimonios que pida de este discernimiento para el uso y ejercicio de su cargo. Y por este auto asi lo proveyo y firmo; doy fé.

ANTONIO MADRID,
JERMIN VILLA.

Escrito.

El Licencio José Hilario Elguero Albacea, dativo del Eccelentisimo, Señor Don Agustin de Yturbide, como lo acredita el espediente que acompaño en tres fojas utiles ante V. como mas haya lugar en derecho, previas las protestas legales, digo; que para el desempeño de un negocio que la testamentaria de mi cargo tiene fuera de la republica, necesito testimonio juridica de dicho adjunto espediente, por lo q. A. V. suplico se sirva mandar que se me espida por el autuario de modo que haya fé comproban en la forma legal. Es justicia, juro lo necesario, &a.

Lic. JOSÉ H. ELGUERO.

Auto.

Mexico, Mayo veintidos de mil ochocientos cincuenta y dos.—Como lo pide, lo proveyo el Señor juez y firmo; doy fé.

MADRID,
JERMIN VILLA.

Concuerda el espediente inserto con su original a que me remito de donde se saco este traslado a la letra fielmente corregido en conformidad de lo mandado en el auto inserto; y va en cuatro fojas, la primera y esta del sello segundo corriente y las demas del cuarto, en la ciudad de Mexico, a veintidos de Mayo de mil ochocientos cincuenta y dos siendo testigos Don Mariano Cabeza de Vaca, Don Miguel Aristegue, y Don Juan Nepo. Villa, de esta vecindad; doy fé. Entre reng'o y dependiente. Vale.

J. V.
JERMIN VILLA.

Domos fé que Don Jermin Villa, por quien aparece autorizado el testimonio que antecede, es escribano del numero de esta capital fiel, legal y de toda confianza por lo que a todos sus senujantes se les ha dado y da fé y credito judicial y extrajudicialmente. Y para que conste ponemos la presente sellado con el de muestro na-

cional colegio en la ciudad de Mexico a veintidos de Mayo de mil ochocientos cuarenta y dos.

(Flourishes.)

MARO. CABEZA DE VACA,
MIGUEL ARISTEGUI,
JUAN NEPO. CARRION.

[L. S.]

El infrascrito oficial mayor 1o. del ministerio de relaciones interiores y esteriores certifica. Ser autenticas las firmas que anteceden de los escribanos Cabeza de Vaca, Aristegui y Carrion, a las que se da entera fé y credito.

[L. S.]

Mexico, Mayo 26 de 1852.

JOSÉ MARIA ORTIZ MONASTERIO.

Dros. 4 ps.

LEGATION OF THE UNITED STATES.

I, R. P. Letcher, envoy extra. and minister pleno. of the United States of America, near the government of Mexico, do hereby certify that the signature of José Maria Ortiz Monasterio, attached to the preceding document, is in his own proper handwriting, to me well known; that he was at the time of signing the same, and is now, chief clerk of the department of state for foreign affairs of the Mexican government, and by law authorized and required to certify to public documents; and all acts signed by him, as such, are deserving of full faith and credit.

In testimony whereof, I hereunto subscribe my name and affix the seal of this legation, at Mexico, this 26th day of May, A. D. 1852. [L. S.]

R. P. LETCHER.

Filed in office July 6th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

Exhibit D.—Translation.

(The Application.)

I, Agustin de Yturbide, before you, the authority prescribed by the laws, declare:

That, in his last will, my father, Don Agustin de Yturbide, appointed as his first, second and third executors, the licentiate Don Juan Gomez de Navarete, Don Nicolas Carrillo, citizens of this capital, and the priest Don José Antonio Lopez; and that the first and third of the above mentioned executors having died, and the second having made a verbal renunciation of the trust, the succession remained without any representation.

I make a formal declaration of the aforesaid facts to you, hoping and asking that you will be pleased to appoint whomsoever you may think proper as dative executor of the last will of my father;

and I declare furthermore, that the papers of the succession of my father are now actually in the possession of Doña Luisa Cache, widow of the defunct Señor Don Juan Gomez de Navarete. To which I take the prescribed oath.

(Signed) A. DE YTURBIDE.

(The Decree.)

Mexico, Sept. 19, 1850. "Let Don Nicolas Carrillo be made acquainted with the contents of the aforesaid application, and report his answer to me."

This was the decree of the licentiate Don Antonio Madrid, civil judge of this city, and subscribed by him. I certify: "Madrid."

FERMIN VILLA.

On the 20th of the same month, the Señor Don Nicolas Carrillo comes before me, and having made him acquainted with the foregoing application, and having heard it, he declared:

That, in fact, he had renounced the executorship of the estate of Señor Don Agustin Yturbide, as his ill health would not permit him to attend in a proper manner to the duties of the same. On which account, and by such act as may be necessary, he ratifies with all formality the aforesaid renunciation, and subscribes the same. I certify: N. Carrillo.

FERMIN VILLA.

(The Decree.)

Mexico, 25 Sept., 1850. "The renunciation made by Señor Don Nicolas Carrillo, of the executorship of the estate of Señor Don Agustin de Yturbide, is accepted, and in consequence, the licentiate Don Hilario Elquero is appointed, under the style of dative executor, who must be notified of the same, so that having accepted, taken his oath and given security, it may be formally decreed to him." So ordered the judge and subscribed the same. I certify: Madrid.

FERMIN VILLA.

(The Acceptance, Oath and Security.)

In the city of Mexico, 26 Sept:, 1850, came the said Señor Licentiate Don Hilario Elquero. I made him acquainted with the foregoing decree, and having heard it, he declared that he heard and accepted the trust of dative executor of Señor Don Agustin de Yturbide, and took the legal oath to proceed to the execution of his duties with fidelity and according to law; that he would give an account and satisfaction of all the property that shall come into his possession, in order to surrender it, with the payment of all moneys, as soon as he is ordered to do so by a competent judge; that he would, moreover, take all the steps and proceeding appropriate to said trust, without allowing any detriment to result to

the succession by his negligence; and, moreover, if such should occur, that he would make it good out of his own property; and for the faithful performance of the above, he offers Don José Ramon Malo, of this city, who is present, as his security, and whom I certify to be known to me, and who being advised and acquainted with his rights, and what he risks in this case, binds himself as follows: (otorga) "That he supports and stands as security for the aforesaid Señor Elquero; that he will in every respect comply with the duties of the trust he has accepted, and in his failure to do so, that the said bondsman will execute them, as his security, and binds himself so to do, as the principal debtor, and liable to the whole payment of any liabilities, making, as he does intentionally, the liabilities and debt of another his own, without its being necessary to proceed against Señor Elquero nor his property, nor to take any steps, proceedings, or execution of equity or law, the benefit of which he expressly renounces, as well as of all the laws that relate to this subject.

For the performance of which, both parties, principal and surety, bind themselves with the property which they now have or may have, and with the submission and renunciation of the necessary laws. Thus they bound themselves, and subscribed the same before the witnesses, Don Miguel Aristegue and Don Juan Villa, of this city. I certify: José H. Elquero, José R. Malo.

FERMIN VILLA.

(The Appointment.)

In the city of Mexico, Sept. 28, 1850, Señor Don Antonio Madrid, a learned civil judge of this city, in view of the acceptance, oath, and surety preceding, decreed: "That in the name of the supreme power of the nation, he decreed and granted to the Señor licentiate Don Hilario Elquero, the trust of dative executor of the Señor Don Agustin de Yturbide, and in consequence thereof he gave and granted him the power and authority that by law is required or may be necessary, in order to collect the property belonging to the succession, keeping an inventory of what shall come into his possession, in order to surrender it, with any moneys, as soon as he is ordered to do so; that he will take whatever action, steps and proceedings appertain to persons holding similar trusts, and defending the rights of the succession in all the causes, lawsuits, and civil and criminal business that it now has or may have, either as plaintiff or defendant, that it may appear before the tribunals and courts, may be proper before those where petitions are made, protests, charges, answers, executions, injunctions, deposits, releases of property, private or public sale of any which may come into his possession; he may produce witnesses and documents, which he may obtain from those who have them; (may have every facility in his suits;) may hear both interlocutory and

final judgments; he may agree to what is decided in his favor, and from an adverse decision he may appeal and petition; he may pursue his proceedings or stop them; (he may challenge, reject and set aside;) and finally, may do all other acts, make petitions, and take such steps and proceedings as may be necessary, as this decree confers upon him the power to do these things and everything else connected therewith or dependent upon them, with a free and liberal administration of his trust and the power of entering suits, taking oaths, and giving powers of attorney upon his own responsibility. For the greater validity and permanence, the said judge interposed his authority and judicial decree, as prescribed by law, and he orders that the executor be handed the evidence of this appointment and decree which he asks for, for the service of his trust, and by this decree he so adjudged and subscribed the same. I certify: Antonio Madrid.

FERMIN VILLA.

(Application.)

I, the licentiate José Hilario Elquero, dative executor of his excellency Señor Don Agustin de Yturbide, as is established by the accompanying espediente, contained in three leaves, before you as prescribed by the laws, the legal preliminary protests being made, declare, that for the accomplishment of a certain business that the succession under my charge has out of the republic, I have need of the judicial evidence of said accompanying espediente, for which reason I pray that you will be pleased to give orders that the clerk furnish it to me, duly certified to and prepared in conformity with all legal formalities. It is justice. I take the prescribed oath, &c.

Licenciado JOSÉ H. ELQUERO.

(The Decree.)

Mexico, *May* 22, 1852.

According to the above application was the decree of the judge, and subscribed by him. I certify: Madrid.

FERMIN VILLA.

The expediente herein inserted agrees with the original, with which I have compared it, and from which this was taken faithfully to the letter, corrected, in conformity with the order thereinbefore inserted, and is issued on four leaves, the first and this with the second seal of the present, (biennial '52, '53,) and the others with the fourth. In the city of Mexico, the 22d of May, 1852, before the witnesses, Don Mariano Cabeza de Vaca, Don Miguel Aristegue, and Don Juan Nep. Villa, of this city. I certify.

FERMIN VILLA.

We certify that Don Fermin Villa, by whom appears authenticated the preceding record, is a notary of the number of this capi-

tal, legal, duly commissioned, and worthy of all confidence, wherefore to all of his acts of a similar character there has been and is given full faith and credit, both judicially and extrajudicially.

And in order that this may so appear, we subscribe this certificate, with the seal of our national college, in the city of Mexico, the 22d day of May, 1852.

MARIANO CABEZA DE VACA,
JUAN NEP. CARRON,
MIGUEL ARISTEGUE.

[SEAL.]

The undersigned, chief clerk of the bureau of the minister of foreign and domestic relations, certify that the preceding signatures of the notaries Cabeza de Vaca, Aristegue, and Carrion are genuine, and that full faith and credit are given them.

Mexico, May 26, 1852.

JOSÉ MARIA ORTEZ MONASTERIO.

LEGATION OF THE U. STATES AT MEXICO.

I, R. P. Letcher, env'y extr'y and minister plen'y at Mexico, do hereby certify that the signature of José Maria Ortez Monasterio, attached to the preceding document, is in his own proper handwriting, to me well known; that he was at the time of signing the same and is now chief clerk of the department of state for foreign affairs of the Mexican gov't, &c.

Mexico, 26 May, 1852.

(Signed) R. P. LETCHER.

Filed in office July 6th, 1852.

(Signed) GEO. FISHER, *Secretary.*

Exhibit E.

LEGATION OF THE U. STATES OF AMERICA AT MEXICO.

I, Robert P. Letcher, envoy extr'y and minister plen'y of the United States of America, near the government of Mexico, do hereby certify that the signatures to the following documents, signed by O. Monasterio, are in his own proper handwriting, to me well known, and that he was at the time of signing the same and is at present chief clerk of the department of foreign affairs of the Mexican government, and by law authorized and required to certify to copies of public documents, and all acts signed by him, as such, are deserving of full faith and credit.

In testimony whereof, I hereunto subscribe my name, and affix the seal of my office, at the city of Mexico, this 20th day of November, A. D. 1851. [L. S.]

R. P. LETCHER.

Secretaria de Hacienda:

EXMO. SR.: El E. Sr. Presidente interino de los Estados Unidos

Americanos se ha servido dirijirme el decreto que segue. El Presidente interino de los Estados Unidos Mexicanos, á los habitantes de la republica, sabed que el Congreso general ha decretado lo siguiente:

Arto. 1o. El millon de pesos concedido al General D. Agustin de Yturbide pr. la junta provisional gubernativa el veintiuno de Febrero de mil ochocientos veintidos, en premio del sublime merito que contrajo haciendo la independencia de su Patria, se entregará á su Albasea y herederos en dinero cuando y como las circunstancias del Erario lo permitan.

2o. Las veinte leguas cuadradas de que se habla en el mismo decreto, y que el consiguaba en Tejas, se daran al Albasea y herederos en los Territorios de Nuevo Mexico, ó de la Alta y Bajá California, sino pudiere ser en Tejas, en los terminos en que el gobierno acuerde con los interesados.

AGUSTIN PERES DE LEBRIJA,
Diputado Presidente.
ANGEL GARCIA QUINTANAR,
Senador Vice Presidente.
PEDRO DE AHUMADA,
Diputado S'rio.
JOSÉ ANTONIO QUINTERO,
Senador Secretario.

Por tanto, mando se imprima, publique, circule y que se le dé el debido cumplimiento.

Palacio del gobo. federal en Mexico, á 18 de Abril, de 1835.

A. D. JOSÉ ANTONIO BLASCO.

Miguel Barragan.

Comunicolo á esa secretaria para su inteligencia y fines consiguientes. Dios y libertad. Mexico, Abril 18, de 1835.

BLASCO,
A la Secretaria de Relaciones.

Es copia. Mexico, 30 de Agosto, de 1850.

O. MONASTERIO.

El decreto de 21 de Febrero, de 1822, que secita es como sigue.

La soberana junta provisional gubernativa, teniendo en consideracion el herico valor y acendrado patriotismo con que el generalisimo, presidente de la regencia D. Agustin de Yturbide para libertar a la America del Septentrion, su patria de la dominacion Espanola que la oprimia, proclamo la independencia en Yguala el 24 de Febrero, de 821, esponiendo su persona y vida, la suerte de sus hijos, la de su muejer, la de su anciano padre, y la de sus parientes y allegados la juro el 2 de Marzo del mismo ano propagando la opinion en todo el reino bajo las medidas mas proporcionadas para el logro de tan grande y sublime empresa el sacrificio que hizo de sus bienes y fortuna; las privaciones que sufrio; los imuen-

sos riesgos y peligros que le fue preciso superar, entre ellos la persecucion del gobierno Espanol que por medio de la fuerza, la seduccion, la intriga y los premios ataco su existencia, y por medio de la difamacion ultrajo su buen nombre; las acertadas medidas, asi politicas como militares, con que haciendose el centro de la unidad, de la fuerza armada y moral de las provincias derijio ambas con tanto acierto, que el paso que hizo respetables las tres garantias desalojo a las tropas Espanolas con fuerzas inferiores en las ciudades de Valladolid y Queretaro y despues de las de puebla y Mexico; el valor con que supo en todas las acciones que se le presentaron vencer á los enemigos economisando la sangre por una y otra parte en tanto estremo, que por la de los Mexicanos no llegan a doscientos hombres los muertos; gobernando el ejercito con el mayor moderacion y prudencia, que ninguno de los pueblos por donde transito tuvo de que quejarse, y antes bien todos bendecian su exacta disciplina y valor; la discreta economia de sus gastos la consideracion que le merecieron los pueblos, a quienes liberto de las contribuciones rainosas que los afligian, y modero otras; la empenosa actividad con que supo reanimar el orden haciendo respectar a las autoridades y los derechos de los ciudadanos, los de su libertad individual y los de sus propiedades; la provision y tino con que celebro el tratado de Cordova, removiendo con este deticado manejo politico multitud de obstaculos, que aunque al fin, se hubieran vencido seria despues de nuetros gastos y danos tal vez irreparables; el desinteres con que en todo se ha manejado procurando solo el bien de su patria, a la que puso en el goce completo de su libertad y derechos sin hacer otra cosa mas sino lo que la misma nacion quiso ejecutase en su mayor obsequio y servicio, llegando su modestin hasta el estremo de rehusar con la mas viva instancia el establecimiento de su casa luego que entendio se trataba de ejecutarlo, como consta de la reverente gestion que hizo el dio 1o de Febrero del presente ano, que recomendara en todos los tiempos su integridad y exactitud. Y puesto que no habido nacion alguna que no haya correspondido a los autores de su libertad premiandolos condiguamente con honores, empleos y bienes, la Mexicana siempre generosa y magnanima representada pr. esta junta soberana provisional gubernativa, habiendo cumplido ya en cuanto le fue posible con darle los honores y empleos de q. considero digno al autor de su libertad, al fundador del ymperio y al vindicador de sus imprescriptibles dros, teniendo en consideracion que ademas es justo proporcionar la suerte de su casa y la de sus hijos, y a que su desvelo tiene dedicado al bien g'ral de la nacion y a que su prodigioso esfuerzo, liberal modo de pensar y puro patriotismo debe la misma nacion el reunirse el dia 24 del presente para fijar y consolidar su gobierno, para perpetuar la memoria de dia tan glorioso y de un hecho que va a verificar en el seno de la paz y tranquilidad lo que admira la generacion presente, y ensaloaran las venideras como tambien que tantas empresas y prodigiosas

se lograsen en el corto espacio de siete meses, sin necesidad de auxilio estraño, se ha servido decretar y decreta. Lo primero: Que para establecer la casa del Generalisimo Almirante, Presidente de la Regencia Dn. Agustin de Yturbide se le apliquen en pleno dominio y propiedad las fincas rusticas y urbanas, bienes, derechos y accioner del extinguedo Irál. de la Ynquisicion, separandose previamente los pertenecientes á la cofradra de S. Pedro martir, obras pias que evan á su cargo, y capitales, que reconocen á deposito irregular, y un terreno de veinte leguas cuadradas en la provincia de Tejas, en el lugar que se estime mas oportuno, á reserva de lo que el supremo congreso en uso de sus facultades pueda añadir mijoradas las circunstancias del Erario. Lo segundo: Que la regencia á quien se le da toda la autoridad conveniente para el caso, proceda a otorgar los instrumentos necesarios de cesion de los referidos bienes de la ynquisicion, y procede a separar los de la cofradia de S. Pedro martir, obras pias, reconocimientos a deposito irregular, y designe el cuadrado de las veinte leguas y que si restablecidas las rentas del ymperio, este quisiere recoger los bienes entregañdo el millon en numerario, podra hacerlo como tambien el generalisimo pedirlo, y se accedera a la solicitud. Lo tercero: Que respuesto a estar ellos hipotecados a los contribuyentes del prestamo voluntario, se le faculte del mismo modo para que subroque la hipoteca con otros nacionales, no obstante de ser suficientes para responder al pajo los del fondo de las misiones de Californias y la mitad de las aleabalas, pues la fé publica exige se sostenga lo contratado con toda esta formalidad. Tendra lo entendido la regencia del Ymperio, y dispondra lo necesario para su cumplimiento, y que se imprima, publique y cercule. Mexico, 22 de Febrero, de 1822, segundo de la independencia de este Ymperio.

Es copia Mexico, 30 de Ag'to, de 1850.

O. MONASTERIO.

E. S. Desde el dia 20 de Feb'o, de 1841, se me comunico por el ministerio de lo interior que el E. S. presidente se habia servido deferir a la solicitud que hice como Albacea del E. S. D. Agustin Yturbide y de acuerdo con la Sra. su viuda, para que se consignasen en la Alta California las veinte leguas cuadradas de tierra que el D'to de 18 de Abril de 1833, concedio a la familia de aquel en premio de haber hecho la yndependencia de su patria. Lo participe a la Sra. pa. q. de acuerdo con sus hijos me indicase el modo con q. se habia de proceder a la ejecucion, pero no habiendose proporcionado persona de confianza que fuese a escojer, señalar y medir las tierras, ni el dinero necesario, nada le habia podido hacer hasta ahora que el S'r D. Salvador uno de los hijos, que ha cumplido veinte y cinco años, se ha resulto a marchar a aquel departamento, y recibir por si y a nombre de la Sra. su madre y hermanos las tierras, señalar sus limites, y practicar todo lo necessario pa. q. la familia pueda disfrutar de este beneficio.

En tal concepto, y para que pueda aprovechar la ocasion de ir en compañia y disfratar la proteccion del S'r Yniestra que debe salir de un dia a otro, he de merecer a V. E. se sirva dar cuenta al E. S. presidente interino con esta solicitud, a fin de que se digne mandar espedir las ordenes convenientes pa. que tenga efecto la entrega de las tierras y al mismo tiempo se auxilie al S'r D. Salvador con dos mil pesos para gastos del viage por cuenta del millon de que habla la ley citada sirvase V. E. aceptar a la vez las protestas de mi consideracion y aprecio. Dios y libertad. Mexico, Mayo 19 de 1845.

JUAN GOMEZ DE NAVARRETE.

E. S. A'tro de Relaciones y Gobernacion, D. Luis Gonzaja Cuevas.

Es copia. Mejico, Agosto 29 de 1850.

O. MONASTERIO.

Ministerio de Relaciones Exteriores,
Gobernacion y Policia.

E. S. Debiendo pasar á ese departamento Dn. Salvador de Yturbide, hijo del E. S. Dn. Agustin de Yturbide, á recibir por si y á nombre de la ex'ma s'ra su madre y hermanos, las veinte leguas cuadradas de tierra que el decreto, de 18 de Abril, de *de* 1835, concedio á la familia del 1o en premio de haber hecho la yndependencia de su patria, el C. s'or presidente interino se ha servido disponer que V. E. haga se proceda á la medida de las referidas veinte leguas cuadradas en los terrenos baldios del territorio de su mando que convengan al citado D. Salvador, y de cuenta de haberse verificado para la resolucion conveniente. Digolo á V. E. para su cumplimiento y le rietero las seguridades de mi particular aprecio. Dios y libertad *y libertad.* Mexico, Junio 5, de 1845.

CUEVAS.

E. S. Gobernador
Del Departamento de Californias.

Es copia. Mexico, 29 de Agosto, de 1850.

O. MONASTERIO.

Gobierno del Departamento de California:

Ex'mo S'or: Tan pronto como se presente á este departamento Dn. Salvador Yturbide á recibir por si y á nombre de la ex'ma s'ra su madre y hermanos, las veinte legus cuadradas de tierra que el decreto, de 18 de Abril, de 1835, concedio a la familia de D. Agustin de Yturdide en premio de haber hecho la yndependencia de la patria, este gobierno dispondra se proceda a la medida de las referidas veinte leguas cuadradas en los terrenos baldios de este departamento que convenga al citado D. Salvador y de haberse asi verificado dare cuenta al ministerio del cargo de V. E. para conocimiento del supremo gobierno. Lo que tengo el honor de decir a V. E. en contestacion a su nota

de 5 de Junio ultimo, suplicandole lo haga asi presente al ex'mo s'or presidente, a quien como a V. E. reitero las seguridades de mi respeto. Dios y libertad. Angeles, Octubre 20, de 1845.

PIO PICO,
Ex'mo S'or Ministro de Relaciones Exteriores Gobernacion y Policia.

Es copia. Mexico, 29 de Agosto, de 1850.

O. MONASTERIO.

El infrascrito Ministro de Relaciones Interiores y Exteriores certifica:

Que habiendose buscado con la escrupulosidad debida en el archivo de esta secretaria la solicitud que el Señor D. Juan Gomez Navarrete hizo al ex'mo señor presidente de la republica en los años de 840 ó '41, pidiendo los terrenos cedidos en la Alta California a la familia del Ex'mo Señor D. Agustin de Yturbide, y la comunicacion dirigida al S'or Navarrete participandole que el ex'mo s'or presidente se habir servido deferir a su solicitud no se han encontrado, por que sin duda fueron estraidos el año de 1847, entre otros muchos papeles, cuando fué ocupado el palacio por las fuerzas Norte Americanas. Mexico, Marzo 31, de 1852.

Por ocupacion del s'or ministro,

JOSÉ MARIA ORTIZ MONASTERIO.

LEGATION OF THE U. STATES OF AMERICA AT MEXICO.

I, Robert P. Letcher, envoy extro. and minister pl'no of the U. States of America, near the government of Mexico, do hereby certify, that the signature of José Maria Ortiz Monasterio, attached to the preceding document, is in his own handwriting, to me well known; that he was at the time of signing the same, and is now, chief clerk of the department of state for foreign affairs of the Mexican government, and by law authorized and required to certify to public documents, and all acts signed by him, as such, are deserving of full faith and credit.

In testimony whereof, I hereunto sign my name, and affix the [L. S.] seal of my office, at Mexico, this 2d day of April, A. D. 1852.

R. P. LETCHER.

Filed in office July 6th, 1852.
(Signed) GEO. FISHER, *Sec'y.*

H. H. No. 1.

Document H. H. No. 1, *annexed to the Depo. of J. Y. Limantour.*

Ministerio de Relaciones Exteriores Gobernacion y Policia:

Defiriendo el E. S. presidente interino a lo solicitado por V. S. en

su oficio de 19 del pp'do se ha servido disponer se libren las ordenes convenientes a los ex'mos s'res gobernador del departamento de Californias y ministro de hacienda, como se verifica hoy, para que el primero haga se midan las veinte leguas cuadradas de tierra concedidas a la familia del E. S. D. Agustin de Yturbide por el decreto de 18 de Abril de '35, en los baldios de d'ho departamento que se señalen por D. Salvador de Yturbide como heredero y representante de la misma familia, y al segundo para que mande entregar al referido D. Salvador para gastos de viage, dos mil pesos en cuenta del millon decretado tambien a fabor de la misma familia. Lo que comunico a V. S. para su conocimiento, y le ofreseo las seguridades de mi untero aprecio.

Dios y libertad. Mejico, Junio 5, de 1845.

CUEVAS.

S'r Senador y Ministro de la Suprema Corte de Justicia D. Juan G. Navarrete.

Filed in office Dec. 24th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

H. H. No. 2.

Document H. H. No. 2, *annexed to the Depo. of J. Y. Limantour.*

Ministerio de Relaciones Exteriores Gobernacion y Policia:

Ex'mo Señor: El E. S. gobernador del departam'to de Californias con f'ha 20 de Octubre me dice lo que segue:

"E. S. Tan pronto como se presente a este departamento D. Salvador del Yturbide a recibir por si y a nombre de la ex'ma s'ra su madre y hermanos, las veinte leguas cuadradas de tierra q. el decreto de 18 de Abril de 1835, concedio a la familia de D. Agustin de Yturbide en premio de haber hecho la independencia de la patria, este gobierno dispondra se proceda a la medida de las referidas veinte leguas cuadradas en los terrenos valdios de este departamento que convenga al citado D. Salvador, y de haberse asi verificado dare cuenta al ministerio del cargo de V. E. para conocim'to del supremo gobierno. Lo que tengo el honor de decir a V. E. en contestacion a su nota de 5 de Junio ultimo, suplicandole lo haga asi presente al E. señor presidente a quien como a V. E. reitero las seguridades de mis respetos."

Y tengo la houra de insertarlo a V. E. como resultado de su comunicacion soble el particular, reiterandole las seguridades de mi distinguido aprecio.

Dios y libertad. Mexico, Noviembre 28, de 1845.

PEÑA Y PEÑA.

E. S'r Senador y Magistrado de la Suprema Corte de Justicia D. Juan G. Navarrete.

Filed in office Dec. 24th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

Exhibit F.—Translation.

OFFICE OF SECRETARY OF THE TREASURY.

To the SECRETARY OF RELATIONS:

His excellency the provisional president of the United States of Mexico has been pleased to communicate to me the following decree:

The provisional president of the United States of Mexico to the inhabitants of the republic:

Know ye, that the general congress has decreed as follows:

Article 1. The one million of dollars granted to General D. Agustin de Yturbide by the governmental provisional congress (junta) the 25th day of February, 1822, in recompense for his high merit in having achieved the independence of his country, will be paid to his executor and heirs in cash when and as the circumstances of the exchequer will permit.

Art. 2. The twenty leagues square mentioned in said decree, and which were therein assigned in Texas, will be given to his heirs and executor in the territories of New Mexico or in Upper and Lower California, (if it cannot be had in Texas,) on such terms as the government may agree upon with the parties interested.

AUGUSTIN PEREZ DE LEBUJA,
President of the Deputies.
ANGEL GARCIA QUINTINAR,
Vice President of the Senate.
PEDRO DE ALRUMADA,
Secretary of House of Deputies.
JOSÉ ANTONIO QUINTERO,
Secretary of the Senate.

Wherefore I order that this decree be printed, published, circulated, and that it be properly complied with.

Palace of the federal government, at Mexico, this 18th day of April, 1835.

A. D. JOSÉ ANTONIO BLASCO.

I communicate this decree to your office for your information, and in furtherance of the ends proposed by it.

God and liberty. April 18, 1835.

BLASCO.

To MIGUEL BARRAGAN.

I certify that the above is a true copy.

Mexico, August 30, 1850.

O. MONASTERIO.

The decree of the 21 of February, above referred to, is as follows:

The sovereign governmental provisional congress holding in

proper consideration the heroic valor and pure patriotism which the Admiral Generallisimo, President of the Regency, D. Augustin de Yturbide, in order to liberate his country, North America, from the Spanish dominion which oppressed her, proclaimed her independence at Ignala, the 24th of February, 1821, exposing his person and his life, the fate of his children and his wife, that of his old father and his friends; on the 2d of March of the same year swore allegiance to it, desseminating the doctrine throughout the kingdom, by means the best adapted for the success of such a great and sublime undertaking; the sacrifice which he made of his property and his person, the privations which he underwent, the dangers which he was obliged to overcome, among others the persecutions of the Spanish government, which, by means of force, seduction, intrigue, and rewards, attacked his existence, and by means of defamation outraged his good name; the certain means, as well political as military, by which, making himself the centre of the union of the armed force and moral strength of the provinces, he directed both with so sure an aim that he at once made respectable the three guarantees, dislodged the Spanish troops with inferior forces from the cities of Valladolid and Queretaro, and afterwards from Pueblo and Mexico; the valor with which he knew how, in all the actions which occurred, to conquer his enemies, at the same time economising the shedding of blood on both sides to such a degree, that on the side of the Mexicans the number of killed amounted to but two hundred; governing the army with the greatest moderation and prudence, that none of the towns through which he passed found cause of complaint, but all rather praised his strict discipline and valor; the wise economy of his expenses, the consideration which he deserved from the towns which he freed entirely from some of the contributions which distressed them and lowered others; the bold activity with which he knew how to restore order, making the authorities respect the rights of the citizens, both those of personal liberty as well as of property; the foresight and skill with which he brought about the treaty of Cordova, dispersing by his delicate management an infinite multitude of difficulties, which, although he would in the end have overcome, yet which nevertheless would have occasioned much expense, and perhaps irreparable injuries; the disinterestedness which he manifested throughout for the good of his country alone, which he placed in the full enjoyment of her liberty and rights, without doing anything other than the same nation desired to do for his greater compliment and benefit, carrying his modesty to the extreme of refusing, with the most lively pertinacity, the establishment of his household, when he learned that such a project was on foot, as appears from this respectful conduct, on the 1st of February of the present year, which will recommend to all ages his punctuality and integrity; and since no nation exists that has not responded to the authors of its liberty,

by rewarding them worthily with honors, station, and wealth, the Mexican nation, ever generous and magnanimous, represented by this governmental provisional sovereign congress, having, as far as it was possible, fulfilled its duty by giving to the author of its liberty, to the founder of the empire, and to the vindicator of its imprescriptible rights the honors and station of which they deemed him worthy, taking into consideration, that now it is just to provide for the future of his family and children, as his vigilance is still dedicated to the general good of the nation, and because, to his great ablities, liberal mode of thinking and pure patriotism, the same nation owes the re-union which is to take place on the 24th of the present month, for the purpose of fixing and consolidating its government, in order to perpetuate the memory of the day so glorious, and by an act which will establish, in the midst of peace and tranquillity, that which the present generation admires and future ones will extol; considering likewise that such numerous and astonishing achievements were accomplished in the short space of seven months, without the necessity of foreign aid, has been pleased to ordain and decrees:

First. That in order to establish the household of the Admiral Generalissimo, President of the Regency, D. Agustin de Yturbide, he shall appropriate to himself, in full ownership and property, all the real estate, both rural and municipal, goods, rights, and actions of the suppressed society of the Inquisition, to the value of one million of dollars, (previously separating those belonging to the brotherhood of St. Peter the Martyr, the charitable obligations chargeable upon them, and funds received from time to time by them as depositaries,) and a tract of land of twenty leagues square, in the province of Texas, in the location he may deem most advantageous; the supreme congress, in the exercise of its punctions, reserving the righ to add to this when the affairs of the treasury are in better condition.

Second. That the regency, to whom is given all the authority necessary for this purpose, shall proceed to execute the necessary instruments of transfer of the above-mentioned property of the Inquisition; and shall proceed to separate that of the brotherhood of St. Peter the Martyr, charitable charges, and acknowledgments to irregular depositors, and shall designate the twenty leagues square of land; and if the revenues of the empire are established, and the government may desire to retake the property by paying the million in cash, that it may do so, provided, at the same time, that the generalissimo may ask for it, his petition to that effect will be granted.

Third. In respect to this property being hypothecated to the contributors to the voluntary loan, the regency is empowered in the same manner to substitute therefor other national resources, notwithstanding the fund derived from the missions of California

and the half of the duties are sufficient to guarantee its payment, since the public faith requires this contract to be sustained with all this formality.

The regency will have this decree carried out, and will provide whatever is necessary for its execution, and for its printing, publication, and circulation.

Mexico, 22d of February, 1822, and 2d of the independence of the empire.

A true copy. Mexico, Nov. 7, 1851.

JOSÉ MARIA ORRIZ MONASTERIO.

To his Excellency the Minister of Relations and Government, D. Luis G. Cuevas:

On the 20th of February, 1841, the minister of the interior communicated to me that his excellency the president had been pleased to grant the petition which I made as executor of D. Agustin de Yturbide, in conjunction with his widow, in order that the twenty leagues square granted by the decree of the 18th of April, 1835, to his family, in recompense for his having achieved the independence of his country, might be located in Upper California.

I communicated with her ladyship, in order that, in concert with her sons, she might designate to me the manner of proceeding to carry it into execution; but not having at her control any person of confidence to choose, mark, and survey the land, nor the necessary means, she has been unable to take any steps in the matter until now, when one of her sons, Don Salvador, having completed his 25th year, has resolved to go to that department, and receive for himself and in the name of his mother and brothers, the lands, mark their boundaries, and do everything necessary in order that the family may enjoy the benefit thereof.

With this object, and in order that he may take advantage of the opportunity of going in company and enjoying the protection of Señor Ymiestra, who expects to set out from day to day, you will be kind enough to inform his excellency the provisional president of this application, so that he may cause the necessary orders to be issued, in order that possession may be taken of the lands, and at the same time that Don Salvador may be assisted two thousand dollars for the expenses of the journey, on account of the million referred to in the above-mentioned law.

Be pleased to accept, at the same time, the assurances of my consideration and respect.

God and liberty. Mexico, May 19, 1845.

JUAN GOMEZ DE NAVARETE.

To E. S. Minister of Relations and Government, D. Luis G. Cuevas.

A true copy. Mexico, Aug. 29, 1851.

O. MONASTERIO.

A true copy. Mexico, Nov. 7, 1851.

JOSÉ MARIA ORRIZ MONASTERIO.

OFFICE OF THE MINISTER OF FOREIGN RELATIONS, GOVERNMENT, AND POLICE.

SIR: Don Salvador de Yturbide, son of his excellency D. Agustin de Yturbide, being about to visit your department, in order to receive for himself, and in the name of his mother and brothers, the 400 square leagues of land which the decree of the 18th of April, 1835, granted to his family, chiefly in recompense for having achieved the independence of his country, his excellency, the provisional president, has been pleased to order that you proceed to the survey of the above mentioned 20 leagues square in the vacant lands of the territory under your command, as may be satisfactory to the aforesaid D. Salvador; and that you give an account of having done so, in order that this business may be finished in a proper manner. I say this to your excellency in order to further its accomplishment, and I reiterate the assurances of my particular regard.

God and liberty. Mexico, June 5, 1845.

CUEVAS.

To his Excellency the Governor of the Department of the Californias.

A true copy. Mexico, Nov. 7, 1851.

OFFICE OF THE GOVERNOR OF THE DEPARTMENT OF CALIFORNIA.

YOUR EXCELLENCY: So soon as Don Salvador shall present himself in this department, to receive for himself and in the name of his mother and brothers the 20 leagues square of land which the decree of the 18th April, 1835, granted to the family of D. Agustin de Yturbide, in recompense for having achieved the independence of his country, this department will give orders to proceed to the survey of the said 20 leagues square, in the vacant lands of this territory, such as may be satisfactory to Don Salvador; and having done so, I will give an account to the bureau in charge of your excellency, for the information of the supreme government.

This is what I have the honor of saying to your excellency in reply to your note of the 8th June last, asking you to submit it to the president, to whom, as well as to yourself, I reiterate the assurances of my respect.

God and liberty. Angeles, October 20, 1845.

PIO PICO.

To his Excellency Minister of Foreign Relations, Government, and Police.

A true copy. Mexico, Nov. 7, 1851.
JOSÉ MARIA ORRIZ MONASTERIO.

OFFICE OF THE MINISTER OF FOREIGN AFFAIRS,
GOVERNMENT, AND POLICE.

His excellency the provisional president, yielding to your application under date of the 19th of the month last past, has been pleased to arrange that the proper orders shall be given to their excellencies, the governor of the department of the Californias and the minister of hacienda, as has been done to-day, in order that the former may cause to be surveyed the 20 leagues square granted to family of his excellency D. Augustin de Yturbide by the decree of the 18th of April, 1835, in the vacant lands of said department, which shall be pointed out by D. Salvador de Yturbide, as heir and representative of the same family; and to the latter in order that he may cause to be delivered to the said D. Salvador, for his expenses of the journey, two thousand dollars on account of the million decreed also in favor of the same family.

I communicate the above to your excellency for your information, and offer you the assurances of my sincere regard.

God and liberty. Mexico, June 5, 1845.

CUEVAS.

To his Excellency, Senator and Judge of the
Supreme Court of Justice, D. JUAN DE NAVARETE.

OFFICE OF THE MINISTER OF FOREIGN RELATIONS,
GOVERNMENT AND POLICE.

MOST EXCELLENT SIR: His excellency the governor of the department of the Californias, by date of the 20th of October, advises me as follows:

"SIR: So soon as D. Salvador de Yturbide shall present himself in this department to receive for himself, and in the name of her ladyship, his mother, and brothers, the twenty leagues square of land, which, by the decree of the 18th April, 1835, was granted to the family of D. Agustin de Yturbide in recompense for having achieved the independence of his country, this government will make arrangements to proceed with the survey of the aforesaid twenty leagues square in the vacant lands of this department as may be agreeable to said D. Salvador, and having accomplished it, I will report to the bureau in charge of your excellency for the information of the supreme government. I have the honor of writing this in reply to your note of the 5 June last, requesting you to show it to the president, to whom, as well as to yourself, I reiterate the assurances of my regard."

I have the honor of enclosing this to your excellency as the re-

sult of his communication upon this business, reiterating the assurances of my distinguished respect.

God and liberty. This day, Mexico, Nov. 28th, 1845.

PEÑA Y PEÑA.

To his Excellency, Senator and Judge
of the Supreme Court of Justice,
D. JUAN G. NAVARETE.

The undersigned, minister of interior and exterior relations, certifies:

That, having searched with the proper care in the archives of this office for the application made by Señor D. Juan Gomez Navarete to his excellency the president of the republic, in the year 1840 or 1841, asking for the lands granted in Upper California to the family of his excellency D. Augustin de Yturbide, and the communication directed to Señor Navarete, informing him that the president had been pleased to grant his application; that these papers could not be found, for the reason that they were doubtless extracted among many others in the year 1847, when the palace was occupied by the North American forces.

Mexico, March 31, 1852.

For the minister.

JOSÉ MARIA ORRIZ MONASTERIO.

The undersigned, chief clerk in the office of the minister of foreign and domestic relations, certifies:

That up to this date there is no official record that the representatives of his excellency Señor Don Augustin de Yturbide have ever been put in possession of the lands which, in recompense for his distinguished services, were awarded to him by the decrees of the 21st February, 1822, and 18th April, 1835.

And, in order to further the ends of the parties interested, I issue this the 23d day of October, 1850.

JOSÉ MARIA ORRIZ MONASTERIO.

Page 53. Copy of decree of Mexican congress, Ap'l 18, 1835.
54. Decree of the same of 22d February, 1822.
57. Application of Navarete, exec'r, to sec'y of state, May 19th, 1845.
59. Cuevas, sec'y of state, to Pio Pico, governor of California, June 5, 1845.
59. Pio Pico in reply, Oct. 20, 1845.
60. Cuevas, sec'y of state, to Navarete, ex'r, 5 June, 1845.
61. Peña y Peña, sec'y of state, to Navarete, 28 Nov., 1845.
62. Certificate of clerk of foreign relations, Mar. 31, 1852.
62. Certificate do. do. do., Oct. 23, 1850.

Filed in office July 6th, 1852.
(Signed) GEORGE FISHER,
Secretary.

Opinion.

THE EXECUTOR AND HEIRS OF AGUSTIN DE YTURBIDE
vs.
THE UNITED STATES.

For 400 square leagues of land on the west side of the Sacramento river.

[*Here follows map—see original, page* 67.]

By a decree of the 21st of February, 1822, passed by the provisional congress of Mexico, which was organized under the provision of the treaty of Cordova, there were granted to Agustin de Yturbide, in consideration of his services in the then recent revolution, the estate of the suppressed society of the inquisition to the value of one million of dollars, and also a tract of land of twenty leagues square in the province of Texas, in the location he may deem most advantageous. At the date of this decre, Yturbide was president of the regency, in whose hands was the supreme executive power of Mexico. In the eventful period of the next eighteen months, he was crowned as emperor of Mexico, was compelled to abdicate, departed in exile from his country, was declared a traitor by act of congress, returned again to his native land, and was arrested and executed.

By decree of the 18th of April, 1835, the Mexican congress ordered the one million of dollars mentioned in the former decree to be paid in cash as soon as the condition of the exchequer would permit, and "that the twenty square leagues of land mentioned in said decree be given to his heirs and executors in the territories of New Mexico, or in Upper and Lower California, (if it cannot be had in Texas,) on such terms as the government may agree upon with the parties interested."

Subsequently, application was made to the executive for leave to make the location of the land in California, and on the 5th of June, 1845, a communication was made by the minister of foreign relations to the governor of the department of Californias, stating that Don Salvador de Yturbide, the son of his excellency Don Agustin de Yturbide, was about to visit that department, in order to receive the land before mentioned, and that the president has ordered that he proceed to the survey of the said twenty leagues square in the vacant lands of the territory as might be satisfactory to said Don

Salvador. The reply of the governor, Pio Pico, under date of October 20th, 1845, declares that as soon as Don Salvador should present himself in the department to receive the land, the department will give orders to proceed to the survey of the said twenty leagues square in the vacant lands of this territory such as may be satisfactory to Don Salvador."

In 1845, according to the testimony of J. Y. Limantour, Salvador de Yturbide was appointed a commissary for Upper California, and started for this country, but an insurrection broke out in Mexico, and prevented his embarking; the journey was therefore abandoned. It is admitted in the petition that from this time until after the full cession of California to the United States by the treaty of Guadalupe Hidalgo, nothing further was done in reference to the location of said lands.

The right of the executor and heirs of Yturbide was simply that of selecting from the vacant national domain in California the quantity of land designated by the decree of congress, and this right continued as long as the sovereign power of Mexico continued in this department. But when this authority ceased, and the whole domain was transferred to the ownership as well as jurisdiction of the United States for a valuable consideration by the treaty of peace and of cession, the right to make the location of the land was determined. If not the fault, it was the misfortune of the claimants that they did not avail themselves of the privilege of making the selection of the lands, to which their government proffered them a title, until that government had transferred that title to another sovereign nation.

The principle so often repeated and applied by us, that a segregation of the land claimed was indispensable to title, and without which no confirmation could be had, applies fully in this case. No such segregation is claimed to have been made while the Mexican authority continued, and after the ratification and proclamation of the treaty it was too late to make it. The claimants may probably have just claims to indemnity from the government of Mexico, but they have clearly failed to show a title, legal or equitable, to any portion of the territory ceded to the United States by that nation.

The claim must therefore be rejected.

Rejected.

Filed in office December 19, 1854.

(Signed) GEO. FISHER,
Secretary.

Decree.

THE EXECUTOR AND HEIRS OF AGUSTIN DE YTURBIDE
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged

by the commission that the claim of the said petitioners is not valid; and it is therefore decreed that their application for a confirmation thereof be denied.

(Signed) ALPHEUS FELCH,
(Signed) R. AUG. THOMPSON,
(Signed) S. B. FARWELL,
Commissioners.

Filed in office December 19, 1854.
(Singed) GEO. FISHER,
Secretary.

Order.

It appearing to the satisfaction of this board, that the land adjudicated in this case is situated in the northern district of California, it is hereby—

Ordered, That two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary; one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

Secretary's Certificate.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing seventy pages, numbered from one to seventy, both inclusive, to contain a full, correct, and true transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 281 on the docket of the said board, wherein The Executor and Heirs of Agustin Yturbide are the claimants against The United States for the place known by the name of "twenty leagues square of land."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twenty-fifth day of May, A. D. 1855, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, [SEAL.]
Secretary.

Endorsed: Filed June 2, 1855.
JNO. A. MONROE, *Clerk.*

Notice of Motion and Affidavits.

In the District Court of the United States for the northern district of California.

AGUSTIN YTURBIDE et al.
vs.
THE UNITED STATES. } No. 207.

You will please take notice that on the 3d day of April, 1856, at the opening of the court, or as soon thereafter as counsel can be heard, I shall move said court for leave to serve and file in said cause a notice of the intention of the claimants to prosecute the appeal pending in said court from the decision rendered in said cause by the United States land commissioners for the adjudication of private land claims in the State of California; and shall also at the same time move said court for leave to prosecute said appeal; and on the hearing of said motions shall offer in support thereof the affidavits of J. B. Crockett and Gwyn Page, copies of which are hereunto annexed.

Dated at San Francisco, this 2d day of April, 1856.

J. B. CROCKETT,
Att'y for Claimants.

To S. W. INGE, Esq.,
District Attorney for the United States.

District Court of the United States for the northern district of Cal'a.

AGUSTIN YTURBIDE et als.
vs.
THE UNITED STATES. } No. 207.

J. B. Crockett, being duly sworn, deposes that he is the sole counsel for the claimants in the above entitled cause, his former partner, J. B. Wells, having left California on or about the 1st June, 1855, with the intention not to return again to this State, as deponent has been informed and believes. That deponent himself left this State on the 16th day of June, 1855, on a visit to the Atlantic States, upon necessary business requiring his attention there. That it was his intention to return to this State within about four months after his departure; but soon after his arrival in the Eastern States he was seized with intermittent fever, and continued sick for a period of more than five months, with occasional short intervals of tolerable health, but was advised by his physicians that he could not safely undertake the voyage to California in his then state of health. He was in this manner detained in Kentucky until about the 28th Dec'r, when he set out for California, reaching San Francisco on the 2d day of February last. He states that the transcript of the record in the above entitled cause was filed in the district court on the 2d day of June last, only a few days before depo-

nent's departure from the State, and he was not aware when he left that it had been so filed. But upon leaving, he requested his present partner, Gwyn Page, to file notices of appeal for deponent in all his land cases pending in the district court, and left with him for that purpose a list of said cases, on which list was the case aforesaid; but owing to mere inadvertence, and by mistake, the said Page overlooked the said case, and omitted to file and serve said notice therein within six months next after the filing of said transcript.

Deponent further states that said Page is not one of the attorneys for the claimants, and has no interest in said cause as attorney or otherwise, and was acting in respect to said notice only at the request of this deponent; and, except for deponent's sickness as aforesaid, he would have returned to San Francisco in time to have filed and served said notice, and would have done so within the proper time.

J. B. CROCKETT.

Sworn to before me, March 31, 1856.

W. H. CHEVERS,
U. S. Commissioner.

Gwyn Page, being duly sworn, deposes that he has read the foregoing affidavit of J. B. Crockett, and that it is true, as therein stated, that said Crockett, on his departure for the Atlantic States in June last, left with deponent a list of his land cases pending in the district court of the United States for the northern district of California, and requested deponent to file notices of appeal therein in the proper time, which he promised to do; but in the multiplicity of his engagements he accidentally overlooked the case referred to in said Crockett's affidavit, and, through mere inadvertence, omitted in that case to file the notice of appeal within the proper time.

GWYN PAGE.

Sworn to before me, March 31, 1856.

W. H. CHEVERS,
U. S. Commissioner.

Endorsed: Filed April 3, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Notice of Appeal.

U. S. District Court, nor. district of Cal'a.

EXECUTOR AND HEIRS OF AGUSTIN DE YTURBIDE vs. THE UNITED STATES.

You will please take notice, that it is the intention of the above

named claimants to prosecute the appeal from the decision of the board of U. S. land commissioners, rejecting their claim.

Yours, &c.,

WALKER, CROCKETT, WELLS & BAKER,
Att'ys for Claimants.

Endorsed: Filed April 30, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Petition.

In the District Court of the United States, northern district of California.

DON HILARIO ELQUIERO, Executor of the last Will and Testament of Don Agustin de Yturbide, deceased, Doña Maria Huerte de Yturbide, widow of said Agustin de Yturbide, Don Agustin Gominus de Yturbide, Angel de Yturbide, Salvador de Yturbide, Felipe de Yturbide, Agustin C. D. Yturbide, Doña Sabina de Yturbide, and Josefa de Yturbide, the children, devisees and heirs-at-law of the said Agustin de Yturbide, deceased,

v.

THE UNITED STATES.

To the Honorable Ogden Hoffman, jr. Judge of the District Court of the United States for the northern district of California.

Your petitioners above named respectfully show that heretofore, to wit, on the 6th day of July, 1852, they filed before the United States board of land commissioners for the State of California a petition for the confirmation of their claim to a tract of land situate in the northern district of California, and in the county of , for a description of which land and the title thereto reference is hereby made to said petition. That after hearing said petition, the proofs, and the argument of counsel in the cause, the said board, on the 19th day of December, 1854, rejected said claim as invalid; that on the 2d day of June, 1855, a transcript of the record was filed in this court, by virtue whereof and by force of the statute in that case made and provided, an appeal to this court was duly effected; that on the 3d day of April, 1856, your petitioners filed in this court a notice of their intention to prosecute said appeal.

Your petitioners therefore pray that the decision of said board be reversed, and that this court confirm their title to said claim,

to which confirmation your petitioners allege they are justly and lawfully entitled.

WALKER, CROCKET, WELLS & BAKER,
Atty's for Claimants.

Endorsed: Filed April 30, 1856.
JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of Dom'o Danglada.

United States District Court, northern district of California.

San Francisco, *August* 26, 1856.

On this day, before George Pen Johnson, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c. &c., came Domingo Danglada, a witness produced on behalf of the claimants in case No. 207, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 281 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present, the U. S. district attorney on behalf of the U. S., and J. B. Crocket, esq., on behalf of the claimants.

Questions by the Att'y for the Claimants.

Question 1. What is your name, age, and place of residence?

Answer 1. My name is Domingo Danglada; I am 45 years of age; and I reside in San Francisco.

Question 2. Are you, or were you, acquainted with Don Salvador Yturbide? If yea, have you any knowledge with respect to his having set out from Mexico on his way to California with reference to the location of lands in controversy in this suit? State all your knowledge on that subject.

Answer 2. I knew Don Salvador Yturbide during his lifetime. I saw him at Tepic about the end of the year 1846. (Tepic is near the port of San Blas on the Pacific coast of Mexico.) He told me he was on his way to California; he was then an officer—a commissary—in the Mexican army, in the division of General Bustamente; as he was coming to the port of Mazatlan the commander-in-chief at that port broke out in a rebellion against the government, and Don Salvador Yturbide was obliged to go back to the city of Mexico.

Cross-examination.—Questions by the U. S. District Attorney.

Question 3. Where were you residing at the time of which you speak, at the end of the year 1846?

Answer 3. I was residing in the city of Tepic.

Question 4. Where was General Bustamente at this time?

Answer 4. He was at Tepic too.

Question 5. Was the city of Mexico at this time embraced within the division of General Bustamente?

Answer 5. It was not.

Question 6. Did Don Salvador Yturbide ever visit California? If so, at what time?

Answer 6. I saw him again in San Francisco in the year 1851 or 1852.

DOM'O DANGLADA.

Sworn to and subscribed before me this 26th day of August, 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Endorsed: Filed August 26, 1856.
JNO. A. MONROE, *Clerk.*

Answer.

In the District Court of the U. S. for the northern district of Cal'a.

THE UNITED STATES
v.
EXECUTOR AND HEIRS OF AGUSTIN YTURBIDE. } D. C. 207.—L. C. 281.

The United States, by their attorney, deny the validity of the title set out in the petition of the appellants, and pray that the decision of the U. S. land commissioners be affirmed, and that the said title be decreed invalid.

San Francisco, Feb'y 12, 1857.

WM. BLANDING,
U. S. Att'y.

Endorsed: Filed February 12, 1857.
JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Order allowing Claimants to file Notice of Appeal.

In the District Court of the United States, northern district of California.

AGUSTIN YTURBIDE et als.
vs.
THE UNITED STATES. } No. 207.

It appearing to the satisfaction of the court, that on the 3d day of April, 1856, an order was made by the court in open session, on due notice to the district attorney of the United States, and on the

affidavits of J. B. Crockett and Gwyn Page, on that day filed in said cause, permitting the claimants to serve and file a notice of their intention to prosecute their appeal from the decision rendered in said cause by the United States land commissioners for the adjudication of private land claims in the State of California, and also permitting said claimants to prosecute said appeal; and it appearing further to the court, that said order, through inadvertence, was omitted to be entered on the minutes of the court, it is thereupon ordered, that the said order be now entered nunc pro tunc, and that the claimants in said cause be permitted to prosecute their said appeal with like effect as if the said order had been duly entered on the day when it was made.

Endorsed: Filed Feb'y 13, 1857, for April 3, 1856.
JNO. A. MONROE, *Cl'k.*
By W. H. CHEVERS, *Dep'y.*

Communication from Minister of Ex. Re. of Mexico to the Governor of California, of June 5, 1845.

Ministerio de Relaciones Exteriores, Gobernacion y Policia.

(Contadada el 20 de Octubre, de 1845.—C.)

Ex'mo Señor: Debiendo pasar a ese departamento D. Salvador Yturbide, hijo del E. Sr. D. Agustin de Yturbide, a recibir por si y a nombre de la ex'ma s'ra su madre y hermanos, las veinte leguas aradradas de tierra que el decreto de 18 de Abril, de 1835, concedió a la familia del primero en premio de haber hecho la yndependencia de su patria, el ex'mo Señor presidente interino se ha servido disponer q'e V. E. haga se proceder a la medida de las referidas veinte leguas cuadradas en los terrenos baldios del territorio de su mando que convenga el citado D. Salvador, y dé cuenta de haberse verificado para la resolucion conveniente.

Digola a V. E. para su cumplimiento y le ristero las seguridades de mi particular aprecio.

Dias y libertad.

Mexico, Junio 5, de 1845.

CUEVAS.

Ex'mo Señor Gobernador del Departamento de Californias.

Office of the Surveyor General of the United States for California.

I, John C. Hays, surveyor general of the United States for the State of California, and as such, having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the pre-

ceding and hereunto annexed page of tracing paper, numbered one, exhibits a true and accurate copy of a certain document now on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this ninth day of April, 1856.

[SEAL.]

JOHN C. HAYS,
U. S. Surveyor General for California.

Translation.

(Answered 20th Oct., 1845.—C.)

OFFICE OF THE MINISTER OF FOREIGN RELATIONS,
GOVERNMENT AND POLICE.

SIR: Don Salvador de Yturbide, son of his excellency, D. Agustin de Yturbide, being about to visit your department in order to receive for himself and in the name of his mother and brothers, the twenty leagues square of land which the decree of the 8th of April, 1835, granted to his family, chiefly in recompense for having achieved the independence of his country, his excellency, the provisional president, has been pleased to order that you proceed to the survey of the above mentioned twenty leagues square, in the vacant lands of the territory under your command, as may be satisfactory to the aforesaid D. Salvador, and that you give an account of having done so, in order that this business may be finished in a proper manner.

I say this to your excellency in order to further its accomplishment, and I reiterate the assurances of my particular regard.

God and liberty.

Mexico, June 5, 1845.

CUEVAS.

To his Excellency the Governor of the Dep't of the Californias.

Endorsed: Filed May 29, 1857.

JNO. A. MONROE, *Cl'k.*
By CHEVERS, *Dep'y.*

Communication of the Mexican Minister, &c., to the Hon. R. P. Letcher.

(Copia.)

A. S. E. el S. R. P. Letcher, Enviado Extraordinario y Ministro Plenipotenciario de los Estadas Unidos de America.

PALACIO NATIONAL, MEXICO,
Mayo 24, *de* 1852.

El infrascrito Ministro de Relaciones tiene el honor de remitir a S. E. el S. R. P. Letcher, Enviado Estraordinario y Ministro Plenipotenciario de los Estadas Unidos de America, copia del ocurso que

se ha presentado por parte de la testamentaria del E. S. D. Agustin de Yturbide para que se le de posecion por el gobierno Americano de veinte leguas en cuadro de tierra en la Alta California que le concedio el gobierno de Mexico, en 1822.

El infrascrito al remitir el documento referido, recomienda al S. Letcher el buen despacho del asunto, pues siendo cierto cuanto se espone en el asi lo espera del gobierno Americano.

El infrascrito aprovecha esta portanidad para recitara al S. Letcher las segudades de su muy distinguida consideracion.

(Firmada:) JOSÉ F. RAMIREZ.

LEGATION OF THE UNITED STATES, MEXICO,
May 26, 1852.

I certify that the foregoing is a true and faithful copy of the original on file in this legation.

[SEAL.] R. P. LETCHER.

(Copia.)

E. S. El Licenciado José Hilario Elguero, albacea dativo del ex'mo S'or D. Agustin de Yturbide, ante V. E. respectuosamente expongo; que por decreto de 21 de Febrero, de 1822, se mandaron dar al ex'mo S'or Yturbide en premio de haber hecho la independencia veinte leguas en cuadro de tierra en Texas, y por la ley de Abril de 1835, se dispuso que esos terrenos se diesen al albacea y Herederos del espresado Señor en Nuevo Mexico o la Alta California en los terminos que el supremo gobierno acordarse con los interesados. Mi antecesor en el albacearzo el Señor D. Juan Gomez de Navarete, solicito en el año de 1843, que las tierras se dieran en la Alta California, y habiendo el supremo gobierno accedido a su solicitud, se libro orden al gobernador de aquel departamento con fecha 5 de Junio, de 1845, para que diese la correspondiente posecion al Señor D. Salvador de Yturbide que es uno de los herederos, el cual marcho para aquel punto pero hallandose en camino, estallo und revolucion que le impidio seguir el viage, y despues por la guerra con los Estados Unidos, fue ya muy dificil y quedo sin efectuarse la posesion. Esta no puede darse ya por las autoridades Mexicanos, en virtud de la cesion que se hizo de la Alta California, a los Estados Unidos en los tratados de Guadalupe, pero como la testamentaria que represento tenia ya adquirido un titulo legal a aquellas tierras, y solo le falto el acto de la posecion material, parece justo que por el gobierno de los Estados Unidos se le reconosca y haga efectivo su derecho. Y al efecto creo que seria de gran peso el que V. E. se sirviese dirijir una nota al ex'mo Señor ministro plenipotenciario de la expresada republica a fin de que se sirva recomendar este negocio con su gobierno y asegurandole que son ciertas las hechos que dijo referidos, por constar en la secretaria del digno cargo de V. E. De esta manera el gobierno Mexicano podra con-

tribuir a que tenga efecto una de las gracias con que nuestra patria quiso recompensar el relevante merito del candillo de nuestra independencia. Y por lo tanto a V. E. suplico se sirva acceder a mi solicitud.

Mexico, Mayo 21, de 1852.

JOSE H. ELGUERO.

Ex'mo Señor.

Es copia.—Mexico, 24 de Mayo, 1852.

(Firmado:) JOSE MARIA ORTIZ MONASTERIO.

LEGATION OF THE UNITED STATES, MEXICO,
May 26, 1852.

I certify that the foregoing is a true and faithful copy of the original on file in this legation.

[SEAL.] R. P. LETCHER.

Translation.

To His Excellency R. P. Letcher, Envoy Extraordinary and Minister Plenipotentiary of the United States of America.

NATIONAL PALACE, MEXICO,
May 24, 1852.

The undersigned, minister of relations, has the honor to transmit to his Excellency R. P. Letcher, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, a copy of a statement which has been presented on the part of the succession of his excellency D. Agustin de Yturbide, in order that the estate may obtain possession at the hands of the American government of the twenty leagues square of land in Upper California, which was granted to his excellency in 1822, by the government of Mexico.

The undersigned, in transmitting the document referred to to Mr. Letcher, begs leave to request his early attention to this subject, inasmuch as the statements therein being true, he does not doubt the action of the American government.

The undersigned embraces this opportunity to reiterate to Mr. Letcher the assurances of his most distinguished consideration.

(Signed) JOSÉ F. RAMIREZ.

MOST EXCELLENT SIR: The undersigned, José Hilario Elguero, by profession an attorney, dative administrator of the last will of his excellency D. Agustin de Yturbide, respectfully represents to your excellency:

That by a decree of the 21 February, 1822, a donation was made to his excellency Señor Yturbide, as a recompense for having achieved the independence of his country, of a tract of land of twenty leagues square in Texas, and by the law of the 18th April, 1835,

it was ordered that this land should be given to the executors and heirs, in New Mexico, or Upper California, on such terms as the supreme government might agree upon with the parties interested. My predecessor in the executorship, Don Juan Gomez de Navarete, petitioned in the year 1843, that the lands should be donated in Alta California; and the supreme government having granted his petition, orders were given on the 5th day of June, 1845, to the governor of that department, to give the necessary possession of the same to D. Salvador Yturbide, one of the heirs, and who started for that territory, but while on the route thither a revolution broke out, which prevented him from continuing his journey, and after that time the war with the United States rendered this trip still more difficult, and so it remained, without it being in his power to take possession of the same.

At this time, this possession cannot be given by the Mexican authorities in consequence of the cession made of Alta California to the United States by the treaty of Guadalupe; but as the succession which I represent had already a legal title acquired to said lands, and all that was wanting was the mere act of material possession, it appears to be just that their right should be recognised and made effective by the U. S. government.

And to this end it would be of service, in my opinion, if your excellency would have the kindness to address a note to the minister plenipotentiary of said republic, in order that he may submit this subject to the attention of his government, assuring him that the representations which I have above made are true, and may be verified by reference to the bureau under the worthy charge of your excellency.

In this manner the Mexican government may lend its aid to give effect to one of those acts of gratitude by which our country delighted to honor the distinguished merit of the chief of own independence.

Wherefore I hope your excellency will do me the favor to accede to my request.

Mexico, May 21, 1852.

(Signed) JOSÉ H. ELGUERO.

To His Ec'y Jose F. Ramirez.

A true copy.

Mexico, 24th May, 1852.

(Signed) JOSÉ MARIA ORTIZ MONASTERIO,
Chief Clerk of Secretary of Foreign Relations.

Endorsed: Filed May 29, 1857.

JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Opinion by Judge Hoffman.

U. S. District Court.

THE EXECUTOR AND HEIRS OF AGUSTIN YTURBIDE vs. THE UNITED STATES. } No. 207.

The claim in this case having been rejected by the board, the transcript was duly filed in the clerk's office of this court on the 2d of June, 1855. No notice of appeal was filed by the claimants within six months thereafter as required by law, but on the day of a motion was made by the claimants' counsel for leave to file such notice nunc pro tunc, and to prosecute the appeal. No order or decree dismissing the appeal had been obtained by the district attorney, and the circumstances attending the omission to file the notice were such as to have induced the court at once to grant the application, if it had possessed any discretion on the subject. Much doubt was, however, entertained by the court whether it could, on any showing, disregard what seemed the positive requirements of the statute. The motion was, therefore, with the acquiescence of the district attorney, granted, in order that, if the court had any discretion on the subject, it might appear to have been exercised in favor of the application, and in order that testimony on the merits might be taken, and the whole case submitted to the Supreme Court in such a form as to enable them finally to dispose of it when, for the first time, brought before them. It was, however, expressly mentioned that the point as to the jurisdiction of the court to grant the motion was reserved until the final hearing; and that if the court should then be of opinion that it had no power to allow a notice of appeal to be filed after the expiration of six months from the filing of the transcript, the claim would be rejected for want of jurisdiction. This question must, therefore, be now disposed of.

By the 12th section of the act of 1851, it was provided, "that to entitle either party to a review of the decision of the board of commissioners, notice of the intention to file a petition in the district court shall be entered on the journal of the board within sixty days after the decision of the claim has been notified to the parties, and the decision shall be filed in the district court within six months after the decision has been rendered."

The mode above prescribed for removing the cause was altered by the act of 1852. In that law it was provided, "that the commissioners shall cause a transcript of their proceedings and decision to be filed with the clerk of the district court, and that the filing of such transcript shall ipso facto operate as an appeal for the party against whom the decision shall have been rendered; that if such decision shall be against the private claimant, it shall

be his duty to file a notice within six months thereafter of his intention to prosecute the appeal, and if the decision shall be against the United States, it shall be the duty of the Attorney General, within six months after receiving a copy of the transcript, (directed by the act to be sent to him by the board,) to cause a notice to be filed with the clerk aforesaid that the appeal will be prosecuted by the United States, and on failure of either party to file such notice with the clerk, the appeal shall be regarded as dismissed."

The acts of 1824, 1828, 1830, relating to lands in Missouri, Arkansas and Florida, provided that all claims within their purview should be brought before the courts authorized to adjudicate upon them within a specified period. Under these acts it has always been held that the courts had no jurisdiction over petitions not presented within the time limited.

In United States v. Marvin, 3. Howard, 623, it is said by the court: "The policy of Congress was to settle the claims in as short a time as practicable, so as to enable the government to sell the public lands, which could not be done with propriety until the private claims were ascertained. As these were many in number, and for large quantities, no choice was left to the government but their speedy settlement and severance from the public domain. Such has been its anxious policy throughout, as appears from almost every law passed on the subject." Similar observations are repeated in Vallabolas v. The United States, 6 How., 91.

In furtherance of this policy it was provided by the act of 1851 that all lands, the claims to which shall not be presented to the board within two years from the date of the act, shall be deemed part of the public domain, and after their decision, though an appeal was allowed, the party to be entitled to it was required to file a notice of his intention to prosecute, within sixty days after the decision has been notified to him, and to file his petition in the district court within six months from the date of the decision.

These provisions were clearly limitations, nor will it be contended that, under them, either party could file a petition, or otherwise prosecute his appeal after the expiration of the six months prescribed by law.

The alteration in the mode of taking the appeal made by the law of 1852, above referred to, had for its principal object to relieve the claimants of the burden and expense of procuring copies of the transcripts to be made, and to allow to the Attorney General a longer time to determine whether an appeal should be prosecuted than the sixty days within which the notice was required to be entered on the journals of the board. It was accordingly provided that the board should cause the transcripts to be made out and filed in the district court, and that such filing should ipso facto operate as an appeal. As, however, Congress did not mean to enact that a land case should be appealed, whether the party against whom the

decision had been made desired it or not, and as the provisional appeal could not continue forever, the same period for filing a notice of an intention to prosecute it, or to profit by the appeal which had been thus by operation of law been taken, was prescribed, as had previously been assigned for filing the petition in the district court.

It was, therefore, not only made the duty of the Attorney General or the claimant to file such notice within the time limited, but it was provided that on the failue of either party to file such a notice, the appeal "should be regarded as dismissed."

We think that by these provisions Congress intended to prescribe a rule of action to the court, which it is not at liberty to evade or to disregard. That some limitation of the right of appeal to a definite period is necessary in all cases, is obvious. That it is peculiarly necessary in this class of cases, and that it has been restricted within limits much narrower than those allowed in ordinary suits, by all the acts of Congress previously passed, is equally evident. When, therefore, we find the act of 1851 allowing a time for appeal still shorter than that prescribed in previous acts, it is difficult to believe that Congress, by the amended act of 1852, intended to depart from a policy so well settled and so necessary, and to permit the court to allow the appeal to be prosecuted whenever in its judgment the party desirous of appealing might sufficiently excuse his omission.

If it be said that hard cases may arise, and that such a power might with safety and propriety be committed to the courts, it may be answered, first, that hard cases most always occur under any general rule of law, however beneficent or necessary it may be; and secondly, that courts have never felt themselves at liberty to dispense with express provisions of law, whether in statutes of limitations, or in those regulating appeals, or in others, upon any equitable ground. To this effect is the language of the Supreme Court in Saltmarsh v. Tuthill, 12 How., 389; and in "The Bank of Alabama v. Dalton," 9 How., 522, the Supreme Court decided that it could not engraft on a statute of limitations an exception not found therein, however reasonable and just it might be.

It is urged that the case at bar is to be distinguished from those under the statutes of 1824, 1828 and 1830, inasmuch as the latter limited the time within which the petition was to be filed, which was the commencement of the suit; whereas by the act of 1852, the filing of the transcript ipso facto constitutes an appeal. The court, therefore, has jurisdiction of the suit, and the notice is not necessary to confer it. Hence (it is argued) the filing of the notice is not indispensable to the retention of the cause in court, after it has been properly brought there.

It is true that the filing of the transcript operates as an appeal, and the cause is properly in court. But the appeal so taken, and

the jurisdiction so acquired, are obviously but temporary and provisional. The very law which declares that the filing of the transcript shall operate as an appeal, prescribes the period and the conditions of its continuance in court; and though the appeal is pending, and the court has jurisdiction for six months, yet if during that time no notice be filed, the same law requires that the appeal shall be deemed to be no longer pending, or that it shall be regarded as dismissed. The law which gave vitality to the appeal during the period limited, peremptorily deprives it of life, unless certain conditions necessary to continue its existence be fulfilled.

Such we consider would be the construction of statutory provisions like these were, if they related to ordinary suits before a court of general and superior jurisdiction. But they should a fortiori be so construed in this case, where the court has but a special and limited jurisdiction, derived from the statute alone, and to be exercised like the jurisdiction of an inferior court, only in the manner and to the extent prescribed by the statute.

The claimants' counsel have adduced in support of their construction of the statute, an illustration from the practice of the court of chancery in New York. It was, by the rules of that court, provided that if the plaintiff did not reply within a certain time, "he should be precluded from replying." The court, however, on special circumstances, grants leave to file a replication.

But this rule is obviously a mere rule of practice, framed by the court for its own government. Such rules, even when prescribed by a superior tribunal, the court has power to modify to meet the exigencies of special cases—a power which it does not possess over the positive requirements of a statute. 12 Peters, 472; 12 Howard, 389; 9 Howard, 522. Moreover, the practice under this rule shows that it was merely intended to preclude the right of replying as of course, but that it was not intended to take away the right in all cases. The court which made the rule expounds its intention and meaning, and establishes the practice under it.

But if the views heretofore expressed be correct, the provision in the act of 1852 is not to be limited to a rule of practice established by the court, but is a statute of limitation enacted by the legislature. It prescribes a period within which the party is to adopt the appeal which the government has provisionally taken for him, and which is allowed to be pending and awaiting his action for a specified time. His failure to adopt this appeal by filing the required notice, puts him in the same position as if he had been himself required to take it within the same period, and had omitted to do so. We are very sensible of the hardship of this and similar cases. We regret that we have no power to relieve them.

Under the construction we have felt compelled to give to the statute, we have no alternative but to dismiss the claim.

Decree.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Friday, the eighth day of January, in the year of our Lord one thousand eight hundred and fifty-eight; present, the Hon. Ogden Hoffman, dist. judge.

THE UNITED STATES
vs.
EXECUTOR AND HEIRS OF AGUSTIN YTURBIDE. } D. C. 207.—L. C. 281.

This cause came on to be heard on appeal from the final decision of the board of commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress, approved on the 3d of March, A. D. 1851, upon the transcript of the proceedings and decision of the said board of commissioners, and the papers and evidence on which the said decision was founded; and it appearing to the court that the said transcript has been duly filed according to law, and that the decision of the said board of land commissioners was against the said claimants, but that the said claimants did not file a notice with the clerk of this court, within six months after the filing of this transcript, of their intention to prosecute the appeal, and counsel for the respective parties having been heard by the court, it is by the court hereby ordered, adjudged and decreed, that the appeal from the decision of the said board of land commissioners be dismissed for want of jurisdiction in this court to retain the cause.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed January 8, 1858.

JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Order granting Appeal.

In the District Court of the United States, northern district of California.

YTURBIDE'S HEIRS
vs.
UNITED STATES.

In this case, on the application of the claimants made in open court, it is ordered that an appeal in behalf of said claimants from the final decision of this court, rendered in this cause at the present term, be and the same is hereby granted; and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay, upon the appellants entering into bond in the sum

of two hundred and fifty dollars, with sureties to be affirmed by this court.

Endorsed: Filed February 18th, 1858.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Appeal Bond.

District Court of the United States for the northern district of California.

THE EXECUTOR AND HEIRS OF AUGUSTIN YTURBIDE, Claimants and Appellants,
vs.
THE UNITED STATES, Appellees.

Know all men by these presents, that we, Alexander P. Crittenden and William C. Ralston, of the State of California, are held and firmly bound to the above named United States in the sum of two hundred and fifty dollars, to be paid to the said appellee, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated the 19th day of February, A. D. 1858.

Whereas the above named appellants have prosecuted an appeal to the Supreme Court of the United States at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the district court of the United States for the northern district of the State of California: Now, therefore, the condition of this obligation is such, that if the above named appellants shall prosecute his appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise to remain in full force and virtue.

A. P. CRITTENDEN. [SEAL.]
W. C. RALSTON. [SEAL.]

Approved February 19, 1858.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed February 19, 1858.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed pages, from one to one hundred and eight inclusive, contain a full, true, and correct transcript of the record on file from the board of land commissioners, together with the pleadings, depositions, orders, opinion, decree and bond filed in this office, in the

case entitled The United States, Appellees, ads. The Executor and Heirs of Augustin Yturbide, Appellants.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, this 19th day of February, A. D. 1858, and of our independence the 82d.

[SEAL.]

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Filed 27th September, 1858.

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ARGUMENT

OF

FRANK TILFORD

ON THE SUBJECT OF

The San Francisco Outside Lands,

DELIVERED BEFORE THE

JUDICIARY COMMITTEE

OF THE

ASSEMBLY,

AT SACRAMENTO, MARCH 9, 1868.

SACRAMENTO:
STATE CAPITAL REPORTER PRINT, J STREET.
1868.



ARGUMENT OF FRANK TILFORD,

Delivered before the Judiciary Committee of the Assembly, at Sacramento, March 9th, 1868, on the Subject of the San Francisco "Outside Lands."

Mr. Chairman, and Gentlemen of the Committee:

The Board of Supervisors of the City and County of San Francisco has applied to the Legislature for a confirmation of a certain Municipal regulation entitled

ORDER NO. 800,

An order for the Settlement and Quieting Titles to Land in the City and County of San Francisco, situate above high water mark of the Bay of San Francisco and the Pacific Ocean, and without the corporate limits of the City of San Francisco."

An examination of the official map of the City and County of San Francisco, on which is delineated the charter lines as defined by an Act of the Legislature of April 15, 1851, will show the situation and extent of the land referred to in the title of the Ordinance. It may be stated generally that the area described in the Order contains about five thousand five hundred acres, not included in reservations made by the United States Government.

Of this amount, about three thousand acres are dedicated for streets, plazas, a cemetery, park and other public uses, leaving some twenty-five hundred acres to be disposed of and conveyed to parties in the actual, *bona fide* possession thereof, as stated in said Ordinance.

It is conceded that the order for which a ratification is asked has met with considerable opposition; not more, rather less, however, than might have been expected. History teaches that all measures, whether of a municipal or legislative character, which conflict with the ignorance, the prejudices and the interests, real or imaginary, of a multitude of people, are destined to encounter opposition at every stage of their passage.

But in this chamber a different and wiser spirit prevails. The enlightened judgment of the Committee, uninfluenced by the clamors of prejudice, or ignorance, and intent solely on the ascertainment of truth, will, I am well assured, examine the subject under consideration patiently, candidly and intelligently.

It is proper, Mr. Chairman, that the Committee should have a clear understanding of the provisions of the Order which the Legislature is asked to confirm. Sections 1 and 2 reads as follows:

"SECTION 1. Immediately after the passage of this Order, the Board of Supervisors shall proceed to devise and adopt a plan for the subdivision into blocks and lots of all the lands not reserved to the United States, situated on the Peninsula of San Francisco, and within the present corporate limits of said city and county, and above the natural ordinary high water mark of the Bay of San Francisco and the Pacific Ocean, as the same existed on the seventh day of July, eighteen hundred and forty-six, and without the corporate limits of the City of San Francisco, as defined in the Act to re-incorporate the said city, passed by the Legislature of California on the fifteenth day of April, eighteen hundred and fifty-one, so far as said Board may deem such subdivision necessary; and to select and set apart for public uses such lots and portions of said land as said Board may deem necessary, subject to the limitations and provisions hereinafter in this Order contained."

"SEC. 2. After the adoption of the plan provided for in section one of this Order, the Board of Supervisors shall cause to be made a map of said lands, according to said plan. Such map shall show the streets and public highways, the blocks formed by the intersection of the streets and public highways, and the lots into which said blocks shall be subdivided; and upon such map shall be designated the lots and portions of land set apart for public uses, and the particular use for which each lot or portion of land shall have been set apart."

Sections 6 and 7 provide that—

"SEC. 6. As soon as the alterations provided for in section five of this Order shall have been made and delineated on said map, the said map shall become and be the official map of said lands; and the portions of land thereon designated as public streets and highways, and the tract or portion of land set apart and designated on said map as a public park, and the tract or portion of land set apart and designated thereon as a cemetery, and lots for a hospital, city hall, county jail, public schools, fire department, city library, or other public purposes, shall be deemed absolutely dedicated as such.

SEC. 7. No lot set apart for public use, other than for a park, plaza, cemetery, or public square, or for the erection thereon of a city hall, or building for a city library, hospital, county jail,

or an asylum, shall exceed in extent two fifty vara lots; and no tract or portion of land set apart for a plaza or public square shall exceed in extent four whole blocks, formed by the intersection of the main streets of the plan; and the tract or portion of land set apart for a cemetery shall not be less in extent than two hundred acres; and the tract or portion of land set apart for a public park shall not be less than one thousand acres.

Section 11 reads as follows:

SEC. 11. Upon the payment to the Treasurer of the City and County of San Francisco of the amount assessed by the Committee, provided for in section 13 of this Order, upon the lands as provided for in Section 10 of this Order; the City and County of San Francisco hereby relinquishes and grants all the right, title and claim which the said City and County now has or may hereafter acquire as the successor of the Pueblo of San Francisco, or as the grantee or patentee of the United States in and to the lands hereinbefore in this Order described, and not excepted or reserved, or intended to be excepted or reserved by any of the preceding sections or provisions of this Order, and which may not be set apart for public use under any of the preceding sections and provisions, and upon which shall be paid, previous to the first day of April, 1868, all taxes which have been assessed thereon during the five fiscal years preceding the year beginning July 1, 1866, unto the person, or to the heirs and assigns of persons who were, on the 8th day of March, 1866, in the actual *bona fide* possession thereof, by themselves or their tenants, or having been ousted from such possession before or since said day, have recovered or may recover the same by legal process. And it is hereby declared to be the intent and object of this section to pass the right, title and claim of the said City and County in and to every tract or portion of said land delineated on said map, except the portions that are or may be reserved as aforesaid, possessed by one person, unto the possessor thereof in severalty; and every separate tract or portion thereof, except the portions that are or may be reserved as aforesaid, possessed by more than one person, jointly or in common, unto the possessors thereof, jointly or in common."

Section 19 provides:

"SEC. 19. This Order is subject in all its parts to ratification by the Legislature, for which application shall be made by the Board of Supervisors."

The remaining sections, although important, refers to details, and are left unread to be examined by the Committee on a more opportune occasion.

As Section eleven of the the Order declares that "the City and County of San Francisco hereby relinquishes and grants all the right, title and claim of which the said City and County now

has, or may hereafter acquire as the successor of the Pueblo of San Francisco, or as the grantee or patentee of the United States, in and to the lands hereinbefore in the Order described," upon certain specified terms, "unto the person or the heirs and assigns of persons who were on the 8th day of March, 1865, in the actual *bona fide* possession thereof, by themselves or tenants," it becomes necessary to ascertain the precise nature and extent of the estate which the City and County had in these so-called "outside lands" at the date of the passage of the Order, namely, 14th January, 1868.

The determination of this point also involves an inquiry unto the right, title and claim of parties who were in the actual possession of said lands on the day mentioned in the Ordinance.

As a preliminary to the ascertainment of these points, we must determine, first, the proprietory rights of pueblos to lands, and especially what were the right and title to land under the Mexican Government, of the Pueblo of San Francisco.

The term pueblo, in Spanish, corresponds almost exactly to the word town, in our language.

As the latter word, in English, is applied generally to any species of municipality from a village to a metropolis, so the term pueblo, in Spanish, is used generally to denote every form of municipal government, from a hamlet to a city.

PUEBLO OF SAN FRANCISCO.

The germs of the pueblo system were, in all probability, introduced into Spain by the Visi-Goths, in the fourth and fifth centuries, when they wrested the country from the dominion of the Romans.

The rights of the pueblos, whatever their nature or extent, were not derived in California from grants made either by the Crown of Spain, or its successors in sovereignty—the Mexican Nation. They were founded on prscription. Every pueblo had a general right of property over four leagues of land, measured from the center of the main plaza of the settlement, in a square or oblong form, as the nature of the country might render advisable. Within the limits designated, the inhabitants of a pueblo had a perpetual usufruct in the streets, plazas and other places dedicated for public uses, and its officers, acting as the agents of the Government, had a qualified and restricted power of alienating some portions of the land.

The pueblo lands were generally divided and classified as follows:

First, the *Propios*, or such lots, houses and other property as were rented, and the proceeds applied to defray municipal expenses.

Second, *Solares*, or building lots, fronting on the streets and plazas of the town site proper.

Third, the *Ejidos*, or vacant suburbs, corresponding to the word "commons," in English.

Fourth, the *Suertes*, or cultivable lots, near the town, and within the four leagues of the pueblo.

Fifth, the *Dehasas*, or great pasture grounds, over which the herds belonging to inhabitants of the pueblo grazed and ranged at large. (Vide Col. Hist. of S. F., 8–12.)

The municipal affairs of a pueblo, when fully and completely organized, were administered by an Ayuntamiento, composed of an Alcade, Regidores, or Town Councilman, and a Procurados Sindico, or Town Attorney. There were also other officials, whose title and duties corresponded to those of our Justices of the Peace.

San Francisco, it is claimed by the learned author of the "Colonial History," already cited, was established as a Presidial Pueblo in 1776. In that year, by an order of the Marquis de Croix, Viceroy of New Spain, a presidio, fort and mission were founded on the peninsula, and near the Bay of San Francisco, and with them commenced the pueblo.

The Supreme Court of California has, however, held that a municipality was not enacted on the peninsula until eighteen hundred and thirty-four.

Whatever may have been the date or circumstances of its origin, San Francisco, or, as it was frequently styled and generally known, "Yerba Buena," remained for many years a place of no political or commercial importance. It is difficult to find, at times, any traces of its existence.

In 1842, sixty-six years after the establishment of a presidio, the white population of Yerba Buena, scattered along the beach and among the sand hills between the ocean and the Mission Dolores, did not exceed one hundred and sixty.

It continued an obscure and insignificant village until the 7th of July, 1846, when the conquest of California by the American forces, transferred the sovereignty of the country from Mexico to the United States.

The Supreme Court of California having determined, in the case of "Hart vs. Burnett, et al." decided at the April term, 1860, that San Francisco was a pueblo prior to the date of the conquest, and as such, had "*a general right, for public purposes*, to four square leagues of land, to be measured, according to the ordinanzas, from the center of the plaza at the presidio," it becomes of the utmost importance to ascertain, if we can, the *exact* right which it had in the pueblo lands. It will be admitted, without argument, that the City and County of San Francisco is the legal successor to the ancient pueblo.

IN WHOM IS VESTED THE TITLE OF THE PUEBLO LANDS, INCLUDING THE LAND MENTIONED IN ORDER NO. 800; BY WHOM CAN IT BE CONVEYED, AND IN WHAT MANNER?

My answer is that the legal title is in the City and County of San Francisco, subject, however, to the trusts created by the Act of Congress of March 8, 1868. Furthermore, that said lands can be disposed of and conveyed by the Board of Supervisors of the said city and county *only* to the parties in the *bona fide*, actual possession thereof, by themselves or tenants, on the 8th day of March, 1866, in such quantities and upon such terms and conditions as the Legislature of the State of California may prescribe. The Act of Congress reads as follows:

"That all the right and title of the United States to the lands situated within the corporate limits of the city of San Francisco in the State of California, confined to the city of San Francisco, by the decree of the Circuit Court of the United States, for the Northern District of California, entered on the 18th day of May, 1865, be, and the same are, hereby relinquished and granted to the said city of San Francisco and its successors, and the claim of the said city to said land is hereby confirmed, subject, however, to the reservation and exceptions designated in said decree, and upon the following trusts, namely: that all the said land not heretofore granted to said city, shall be disposed of and conveyed by said city to parties in the *bona fide* actual possession thereof, by themselves or tenants, on the passage of this Act, in such quantities and upon such terms and conditions as the Legislature of the State of California may prescribe, except such parcels thereof as may be reserved and set apart by ordinance of said city, for public uses; *provided*, however, that the relinquishment and grant by this Act, shall not interfere with, or prejudice any valid adverse right or claim, if such exist to said land, or any part thereof, whether derived from Spain, Mexico, or the United States; or preclude a judicial examination and adjustment thereof."

As the Act grants "all the right and title of the United States" it becomes necessary to inquire what was the nature, and what the extent of that right and title.

If, at the date of the cession of California to the United States, the pueblo had a complete and absolute title, a fee simple, to the lands in question, then no law of the United States, nor Congressional grant, could add to, impair or detract from such title.

The case is thus forcibly and clearly stated by Judge Pratt, of the 12th Judicial District:

"Perfect titles to lands, whether in individuals or corporations, derived from any former sovereign proprietor of the country, could not, of course, legally be changed or affected as to proprietorship by any action of the Government of the United States, whether attempted to be accomplished through decrees of

tribunals for that purpose created, or through Congressional enactments. The Government could only rightfully act upon and affect the tenure or title of lands which had not passed into private proprietorship before the cession. Its action, in whatever form exerted, could only legally affect such lands the property in which, united to the power of disposition, remained at the date of the cession in the Government of Mexico, and was thereby in condition to pass, and did pass to the United States, as its successor in proprietorship and power of control." [Page 3, Pub. Rep. W. W. Johnson, et al. vs. Bd. Sup's of City and County of San Francisco.]

It is assumed by certain parties, whose zeal exceeds their knowledge, that the Supreme Court of California has decided that a fee simple to these lands was vested in the pueblo, and that Judge Field, in his opinion rendered in the Circuit Court of the United States, in the case of the City of San Francisco vs. The United States, expressed the same or similar views. On reference to the opinion of the Supreme Court in the Hart vs. Burnett case, we find the following language :

"If the Governors of California have granted lands within the general limits of pueblos, it will be presumed, unless the contrary be shown, that such grants were made in accordance with the objects and uses for which such lands have been assigned and dedicated by the laws to the pueblos. The whole matter was subject to the control and direction of the Governor and Territorial Deputation, and the official acts of such officers, within the general scope of their powers, was presumed to have been done by lawful authority." 15 Cal. 549.

The Supreme Court of California, in the case of "Brown vs. San Francisco," says :

"Nor does it by any means follow, that, because a particular tract of land, or some portion of it falls within the general limits of a pueblo, this pueblo has such a right or title to this land as to exempt it from the general operation of the granting powers of the Governor and Deputation. The whole view of our reasoning in *Hart vs. Burnett et al.* was opposed to this view of the character of pueblo titles." (16 Cal., p. 459.)

Further on the Court observes :

"The whole matter of granting lands, within pueblo limits, was subject to the control and direction of the Governor and Territorial deputation, and the official acts of such officers, within the general scope of their powers, are presumed to have been done by lawful authority." (16 Cal., p. 461.)

The Circuit Court of the United States, Justice Field presiding, in the opinion filed October 31, 1864, in the case of "The City of San Francisco vs. the United States," says :

"It is difficult to determine with precision the exact character

of the right or title held by pueblos to the lands assigned to them. The Government undoubtedly retained a right to control their use and disposition, and to appropriate them to public uses, until they had been vested in private proprietorship. Numerous laws have been cited to show that the title remained absolutely in the Government."

Judge Pratt, in the case cited, commenting on the admissions made by these Courts, very forcibly and truly observes:

"These words 'right or title,' are used in a very general and indefinite sense, but in the admissions made that *the whole matter of the alienation and disposition of lands claimed by pueblos was subject to the direction and control of the Governor and Territorial Deputation*, is found a most important element in determining the character of the right or title of such pueblos in and to the lands within their limits. That only is such a right or title to land which unites, in the same person or corporation, the sole power to control its use and alienation, which can be deemed absolute, or one in fee." (Johnson et al. vs. Bd. Sup. City and County of S. Francisco, Pub. Rep. 11.)

While then, no State or Federal tribunal has decided that the pueblo had any right to the use, control and alienation of the lands in question, amounting to the dignity of a title in fee, there is abundant judicial authority tending to prove that the absolute and complete title to the so-called pueblo lands, was vested in Mexico, and by cession of California was transferred to the United States.

Messrs. Thompson and Farwell, a majority of the Board of Land Commission, organized under the Act of 1851, in their opinion confirming the city's claim, say:

"That under the laws of Spain and Mexico no right of property in lands assigned to pueblos or towns was ever vested in those corporations, by which they could alienate or dispose of them in any manner; but such assignment only conferred a right to use and occupy them in the manner prescribed by the laws, under the direction of the superior authorities," and "that the right to alienate or dispose of such lands, whenever exercised by the municipal authorities, was by virtue of powers specially delegated to them for the purpose by the king or nation, in the same manner as the authority to dispose of other portions of the public domain was conferred on other functionaries specially charged with the subject." (See Col. Hist. p. 147.)

The Supreme Court of the United States, in the case of Townsend *et al.* vs. Greely, decided at the December term, 1866, says:

"It may be difficult to state with precision the exact nature of the right or title which the pueblo held in these lands. It was not an indefeasible estate; ownership of the lands in the pueblos could not in strictness be affirmed. It amounted, in

truth, to little more than a restricted and qualified right to alienate portions of the land to its inhabitants for building or cultivation, and to use the remainder for commons, for pasture lands, or as a source of revenue, or for other public purposes."

In confirmation of the view taken by the Supreme Court of the United States, is the fact that of eighty-four grants made by Justices of the Peace and Alcaldes, in San Francisco or Yerba Buena, from January 2, 1836, to June 20, 1846, all were to inhabitants and of building or cultivable lots—*Solares* or *Suertes*. See Col. Hist., 113, 114.

Leaving the field of judicial decision and seeking information from other sources, we shall find that a *marked* and *invariable* characteristic of the tenure by which a Spanish or Mexican pueblo held its common lands, was a power of alienation, always claimed and often exercised by the Supreme Government.

In corroboration I submit an extract from a brief of Mr. Hawes, filed in the City's case:

"But this common use and servitude created by these general laws, and sustained during so many ages, did not restrict the Sovereign's full and absolute property in these common lands of *consejos* or *pueblos*, which, in the demarcation of limits, might be comprehended in this *terminos*, nor impair his right freely to dispose thereof; 'for,' says Elegondo, 'the King's fountains of jurisdiction are the owners (*duenos*) of all the *terminos* situated in their kingdoms, and as such can *donate* them, *divide* or *restrict* them, the same being true of their *pastos*, although the *pueblos* enjoy them, it being presumed that they are conceded only so far as respects their use and administration, the property remaining in the Sovereigns themselves, so that they may limit them afterwards, enlarge or restrict them, or give any new form to the enjoyment (*goze*) thereof.'" Practice Universal, V. 3, p. 107.

From all this we may conclude that the *only estate* which the towns had in their lands was a tenancy at will, which could be determined, in whole or as to a part, at the pleasure of the Supreme Government, in whom was vested the complete and absolute control and ownership of the property.

When Philip I, under the pressure of his necessities, promised his subjects that he would thereafter abstain from alienating such common lands as the pueblos had used for *propios*, he disclosed the important fact that he and the monarchs who preceded him had been in the practice of selling the common lands of the pueblos.

In 1813 the Cortes of Spain, in a session at which Mexico was represented, decreed that all the lands of the pueblos, not only in Spain but in the Provinces beyond the seas, should be sold or granted to private owners. See printed brief of plain-

tiff's counsel in case of Touchard vs. City and County of San Francisco, in U. S. Circuit Court; also, Col. Hist., p. 39.

From 1834 until 1846 the Governors of California granted to individuals not only town lots in Yerba Buena, but ranches of a league or a league and a half in extent, within the four leagues of the pueblo.

Of the former character were the grants made to Leese and Salvador Vallejo, and of the latter the grants to Galindo, Bernal and Noe.

It is a remarkable, and, for the purposes of this argument, a most significant fact, that all these grants, whether made by Governors, Prefects, Alcades or Justices of the Peace, were in the name and by the authority of the Supreme Government of Mexico.

If the ownership in such lands was vested, as has been contested, in the pueblo, why was a grant never made in its name?

In confirmation of the position taken, we have

THE ACTION OF THE SEVERAL DEPARTMENTS OF THE UNITED STATES GOVERNMENT.

1 During the administration of Fillmore, we find orders from the President, extending, in point of time, from November 7, 1850, unto December 31, 1851, making reservations of the so-called pueblo lands, for Governmental purposes.

2. The Congress of the United States, by Acts of July 1, 1864, and March 8, 1866, ceded the right, title and interest of the United States in and to lands situate in the City of San Francisco, to that city, upon the conditions and for the trusts therein mentioned. If the United States had no title or interest to cede, such Acts were vain, idle and superfluous legislation.

3. The Circuit Court of the United States, for the District of California, Justice Field presiding, in the decree confirming the city's title, filed May 1865, excepts from the confirmation—"such parcels of land as have heretofore been reserved or dedicated to public uses by the United States."

The authorities cited and the proofs adduced must carry our minds irresistibly to the conclnsion stated by Judge Pratt in the case already mentioned. He says:

"4th. As to the lands commonly called outside lands, except reservations made for the use of the United States, the title is vested in the city of San Francisco, *in trust*, to be disposed of and conveyed by said city to parties and their heirs and assigns, who were in the *bona fide* actual possession thereof, by themselves or tenants, on the 8th day of March, 1866, in such quantities and upon such terms and conditions as the Legislature of California may prescribe, except such parcels as may be reserved and set apart by ordinance of said city for public uses."

Against this array of proof and precedent, we are told that the Circuit Court of the United States has adjudged these lands to the city, "in trust, for its inhabitants." Assuming that the decree was all that is contended for—what then? It was appealed, and the effect of that appeal is thus clearly stated by the Judge of the 12th Judicial District:

"That decree was not final; it did not operate to pass the fee of the lands out of the United States. Such fee, under the laws through which the decree was made, could only pass out of the United States after it should become final, and *after the issuance of a patent*, pursuant to the laws in that behalf provided. The decree so obtained was appealed from to the Supreme Court of the United States, and the effect of such appeal, until final action thereon in the Supreme Court of the United States, worked a suspension of all further proceedings toward obtaining a patent under it." In the meantime, and while such appeal was pending, the Congress of the United States, on the 8th day of March, 1866, in an Act, entitled "An Act to quiet title to certain lands within the corporate limits of the city and county of San Francisco," disposed of the whole subject in controversy.

THE DUTY OF THE LEGISLATURE.

If the views I have advanced are correct, the duty of the Legislature is manifest, and its course plain. It must ratify Order No. 800, and thus give effect to the wise and beneficent purposes of the Congress of the United States. No other course, consistent with justice or public policy, is left for it to pursue. Bear in mind, Mr. Chairman, that under the Act of March 8th, 1866, there are but two beneficiaries of the trust enacted—public use and the party in possession. The discretion granted to the Legislature is therefore limited—whatever is taken from one *cestui que* trust must necessarily be given to the other.

There is yet another view of the subject which is entitled to our serious consideration.

It is urged by some, and among them by the learned author of the Colonial History, that "the title to the pueblo lands was vested in the corporate City and County of San Francisco, subject to be disposed of by the Board of Supervisors, without any further authority from the Legislature of the State." (Col. Hist. p. 361 and 364.)

If the position thus taken shall be sustained by the Courts, the title of the occupants of the outside lands is already absolute and complete.

By virtue of Order No. 733, approved October 12, 1866, and of Order No. 800, which you are asked to confirm, the City and County has already relinquished all its right and title to these lands to the parties in actual possession thereof on the 8th March, 1866.

The provisions of Order No. 800, for which a ratification is asked are, in every material respect, more favorable to the public than the provisions of Order No. 733.

While the latter, for instance, dedicates three hundred acres for a Park, the former sets apart not less than one thousand acres for that purpose.

But the parties in possession of these lands are willing to forego whatever title they may have under the ordinances named, provided they can obtain a legislative ratification of their claim. They want no litigation which can possibly be avoided; they desire to remove all clouds from their title and devote their means and energies to the improvement of their estates rather than waste them in protracted and ruinous lawsuits.

Assume, however, that the persons now in possession of the outside lands are mere intruders, with no legal rights or equities which the Courts are bound to respect; consider, on the other hand, that the City and County of San Francisco is vested with the legal title in trust for the inhabitants, then it certainly devolves on the Legislature to declare how that trust shall be executed, and how the Board of Supervisors shall dispose of this property. It seems to me, in such a contingency, every dictate of sound policy demands a confirmation of Order No. 800. What disposition shall be made of these lands if the Legislature fails to ratify the ordinance in question? In the various schemes which have been discussed is a proposition to divide and distribute them among all the inhabitants of San Francisco. Under this arrangement the distributive share of each denizen would be a lot with less than six feet frontage—a space which in Jeddo or Pekin might pass for a homestead, but would hardly answer the requirements of the enterprising citizens of our commercial emporium.

Another plan is to sell the lands, at public auction, upon terms favorable to the purchasers. If such a method is adopted, common honesty will demand a repayment of the taxes which have already been received from parties in possession, amounting to sixty or seventy thousand dollars. Who would be benefited by this arrangement? What prudent man would accept, as a gift, much less purchase for a valuable consideration, a lot in these outside lands, with the possession in another, and with the certainty that before that adverse possession could be terminated years must be consumed in costly and vexatious litigation?

Speculators, who can afford to abide the "law's delay," and regard the hazards of litigation as legitimate risks, would be the only purchasers at such a sale.

The sum received under this mode of disposition would hardly exceed the taxes which would have to be returned, and for many years to come the extensive tract included in the limits outside

of the old charter line of the city, would remain a wild and uncultivated waste.

A confirmation of Order No. 800 will give a complete legal title to parties who are in actual possession, and who, without the aid of further legislation, can hold their interests against all contestants.

The owners and occupants of these outside lands are, as a general rule, men of capital, of more than ordinary enterprise, and well acquainted with the value and management of real estate in San Francisco. Give them a reasonable assurance, such as is contained in the proposed Act, of exemption from ruinous litigation, and the results will be alike beneficial and immediate.

Streets will be opened and planked, lots graded, sewers constructed, houses erected, other improvements made, and the whole of this extensive tract, now an unsightly wilderness, will become, in less than five years, not only a magnificent appendage to the City of San Francisco, but a fruitful source of revenue to the State and municipality.

A serious misapprehension seems to prevail in many minds as to the present value of these lands. It has been assumed that they are immensely valuable, worth, it is said, millions of dollars. Such statements are entirely untrue, as far from the fact as are the dreams of a disordered mind from the realities of life.

With the exception of some portions just beyond the line of Devisidaro street, and a tract in the vicinity of the Mission, the ground affected by the Order we are considering, is a dreary and continuous expanse of savage country, rude and sterile at all seasons, but most repulsive when the summer winds sweep across it from the Pacific Ocean, carrying before them vast volumes and clouds of sand. Capital and enterprise with their combined power, alone can reclaim it from the desolation which Nature has spread over its hills and valleys. The legislation which prevents their beneficent application, dooms the Outside Lands to remain an uncultivated waste, useless alike to their owners and the public.

Again, it is said that a few men whose only tenure is a *ribbon fence* seek to wrest from the Legislature a valid title. The answer is found in the fact that there are not less than three thousand persons who, as owners of lots, will be beneficially affected by the proposed law—that a number of them have been paying taxes on those lots for the last fifteen years, and finally, that no one can receive the least benefit from the Act, who was not in *actual bona fide* possession at the time specified in the Ordinance.

When all arguments against the justice and policy of the contemplated enactment are refuted, we are met with the assertion that it is repugnant to the wishes of a large majority of the people of San Francisco. The reply to such an assertion is the fact that it different periods—in October, 1866, and January, 1868—the Supervisors of the City and County passed orders similar in design and character for

the disposal of the outside lands. The first named, No. 733, was enacted by a vote of eight in the affirmative, and one in the negative, while the latter, No. 800, received a unanimous approval. The Mayor who sanctioned the former was a Republican, while in the latter case the Chief Executive of the city, who also gave the measure his official sanction, was and is an acknowledged leader of the San Francisco Democracy.

Another and conclusive answer to such statements, is found in the fact that a majority of the San Francisco delegation, presumed to understand and represent the wishes and views of their constituency, advocate the passage of this measure.

Mr. Chairman—In asking for a confirmation of the Order in question, we do not propose any novel, dangerous, or untried legislation. We simply ask the Representatives of the People to follow in the line of safe precedents, and adopt a course which has been approved by the wisdom of experience. Ten years ago the Van Ness Ordinance came before the Legislature for confirmation. The very same objections that we hear now, were urged then against that measure. It became a Statute, and was universally admitted to have been one of the most admirable and excellent laws ever enacted by a California Legislature. The progress which San Francisco has made within the last decade in population, wealth, and the developement of its material resources, may be attributed, in no small degree, to the effect produced by that measure. It inspired confidence at home and abroad, among all classes, in the titles to San Francisco real estate. While it offered to capital a safe investment, it enabled the honest industrial masses of the people to procure homesteads for their families, and repose in their possession with a feeling of absolute security. When that ordinance passed into a law, there was hardly a highway opened beyond the line of Larkin or Johnston streets, and not a block of six fifty vara lots which would have sold for a thousand dollars. Sand hills and swamps, among which were interspersed a few cheerless cabins, were all that met the vision within the limits of what were then designated as Outside Lands. Not a tree was planted, a garden cultivated, or street improved. Not a dollar could be borrowed on land whose title rested solely on occupancy, and the unfortunate occupant of acres, almost in the heart of the city limits, could scarcely find in their possession sufficient credit to procure for his family the necessaries of life.

The passage of the Act confirming the Van Ness Ordinance wrought a wondrous and immediate change. Improvements of every character commenced on the tract styled the Western Addition, and have progressed with a rapidity without precedent in the history of modern civilization. Streets have been opened, hills leveled, marshes drained, and thousands of homesteads, the abodes of families, cultivated and improved by their prosperous and thriving owners. Blocks of six fifty vara lots unimproved have sold as high as $40,000. The value of the entire real estate in the Eleventh and Twelfth Wards of San Francisco may now be estimated at ten millions of dollars, yielding

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annually to the City and State three hundred thousand dollars. Before the Van Ness Ordinance became a law, this property was comparatively valueless—almost useless to the owner, and certainly worthless to the State.

The character and situation of the lands included in the provisions of the Order we have been considering, are analagous to those embraced within the scope of the Van Ness Ordinance. Every consideration of justice or public policy which induced the Legislature to confirm the latter, will apply with equal force to the proposed enactment.

Two years ago, the Legislature of California, impressed with the necessity of action in regard to these lands, passed an Act similar in design to the one now pending in the Assembly. Unfortunately it failed to receive the Executive sanction, and as a consequence we find the Outside Lands in the same situation which they were at that time.

If then, deference to the decisions of our highest legal tribunals, repect for the policy sanctioned by the Congress of the United States, considerations of public expediency, or the weight of Legislative precedents, can influence your decision, the friends and advocates of the bill under consideration are confident of a favorable report from the Committee, and of a confirmation of the Order under advisement, by the legislative department of the State.

11

BRIEF OF ARGUMENT

25,103



MADE BY

HORACE HAWES,

ON BEHALF OF UNITED STATES,

BEFORE

U. S. Board of Land Commissioners

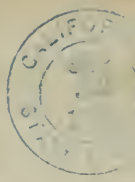
FOR CALIFORNIA, NO. 280,

AT THE REQUEST OF THE U. S. LAW AGENT.

CITY OF SAN FRANCISCO VS. THE UNITED STATES.

DELIVERED MAY 29, 30, 31 AND JUNE 2, 1854.

SAN FRANCISCO:
TIMES AND TRANSCRIPT STEAM PRESSES.
1854.



BRIEF OF ARGUMENT.

Although it will be perceived from a subsequent part of my argument, that all the facts attempted to be established by the claimant, are wholly immaterial and irrelevant to the subject in controversy, inasmuch as no proof has been offered of any grant of lands to the town of which the present city of San Francisco is alleged to be the successor and heir ; yet I propose to refer briefly to such as have been regarded as important, and

1. Was an Ayuntamiento elected for the *Partido* of San Francisco pursuant to the resolution of the Territorial deputation passed Nov. 3, 1834, and communicated to Gen Vallejo by Governor Figueroa in the letter dated Nov. 4, (Exhibit No. 1 to Vallejo's Dep.)

The election of members for such Ayuntamiento undoubtedly took place, and if that is material, I will add that it was held at the Presidio, although we have no documentary evidence of the fact, the documents marked Exhibits 2 and 3, referring only to the choice of electors by whom the members were to be chosen. This Ayuntamiento was installed by the Military Commandant of the Presidio, who had to that time exercised the civil functions with which the newly constituted body was to be charged, because there was no other authority existing that could install them.

2. What was the territorial jurisdiction of this Ayuntamiento?

It will at once be seen that it must be co-extensive with the *Partido* for the only authority for the creation of an Ayuntamiento is found in the resolution of the Depution referred to in the said Exhibit No. 1, which provides that the *Partido* of San Francisco, comprehending by the concurrent testimony of all the witnesses on both sides, a large extent of country on the other side of the Bay of San Francisco, and on this side the whole of the Peninsula as far as San Francisquito Creek, shall proceed to elect a Constitutional Ayuntamiento. And when the election was held, pursuant to this order, says Francisco Sanchez, (p. 42 and 43) the whole *Pueblo* (people,) of San Francisco that is of the *Partido* of that name, came from their several abodes in Contra Costa, Sonoma, San Rafael and other places, "sparing no exertion to do so. as they were anxious to get rid of the military authority." And so, from this time on, the civil authority of the *Partido* was joyfully taken in hand by the *Pueblo* (people) of San Francisco who were to exercise it through the constitutional functionaries, elected by them. Not only did the voters for the Ayuntamiento come from Contra Costa and other places, distant from the Presidio and Port, but a majority of the individuals chosen for electors and of those selected to fill the various offices at different periods, resided either on the other side of the bay or in the Mission of San Francisco, or in some of the ranchos distant from the Presidio and Port, as may be seen from the depositions of Brown, Sanchez, Richardson and others as well as by reference to document C, in which are set forth the names of 27 persons residing in Contra Costa, who in 1835 wanted to be exempted from the *Partido* of San Francisco, on account of the inconveniences that would result to them from being obliged to serve on the Ayuntamiento which at that date was required to hold its sessions at the Presidio.

3. How long did this Ayuntamiento continue to hold its sessions at the Presidio? There can be no question that it was removed to the Mission and never sat at the Presidio after the year 1837. So says Sanchez (p. 42) who was Secretary of that body, and in this he is supported by all the testimony in the case. After the year 1838 until 1846, only two persons, Piña and Soto, who were soldiers with families, continued to reside at the Presidio. The Mission from that period to the war was the residence of the local authorities, and the place where all elections were held.

4. Where is the locality called the *Pueblo* of San Francisco and San Francisco de Asis? That it is the Mission of Dolores, is a fact fully established by the testimony of Richardson, (p. 27). Alvarado, (p. 39), Francisco Sanchez, (p. 42), Jose Castro, (p. 48), Charles Brown, (p. 50)), Jacob P. Leese, (p. 54), and *there is no witness or document that says the contrary.*

5. Were any limits for a town ever established by competent authority, or to be more definite, was the line generally denominated the Vallejo line so established, and for that purpose? I waive the question whether Gen. Vallejo did mark out either on the ground, or on paper, or mentally, the line referred to, as no one will pretend that *he* alone had the power to establish it. I waive also, for the present, the question whether the Territorial Deputation had power to establish it, or to approve the establishment of it. I inquire only if they did so. Neither Gen. Vallejo nor any other witness testifies that they did, nor would parol proof of that fact be admissible, without first laying some foundation for it. But even if it could be proved by parol, no such proof has been offered. Neither has the record of the proceedings of this Deputation been offered, which is the only competent evidence, unless such record has been lost. But we know that the record is not lost, for the Government has produced it, and it contains no act such as the claimant pretends was adopted by the Deputation. If the resolution was adopted and not recorded, it could have no legal effect whatever, because a deliberative body, such as the Territorial Deputation, can not act by parol. Their acts have no legal existence till recorded at least. But even if the act of the Deputation could subsist in parol, that is, could be valid without ever having been recorded, we have the highest evidence possible in such a case, that the act was not adopted, nor even considered, namely the deposition of the presiding member, (p. 47,) who, as first *Vocal* received all communications from the Governor, and distributed to the various committees the business on which they were to report respectively. If the claimant's counsel had entertained any doubt of the truth or accuracy of José Castro, why did they not call one of the six other members whose names appear in the journals of that session, some of whom are yet living in the State, and one of whom, at least, has been in this very room, repeatedly, since Castro's deposition was taken? It must be taken as true then, beyond all controversy, that the Deputation never did act upon the subject at all. The record of their proceedings says so, and the presiding member confirms it by his oath. Was there some other record or journal in which this act might have been entered? That is not pretended. The Zamarano document (No. 18,) which has so clearly been proved to be a forgery, was got up by unskillful hands. It does not purport to certify an act of the Deputation. It certifies only that a certain paper is a copy of a certain other paper, which other paper certifies that the Territorial Deputation had passed a certain act, which act must necessarily be matter of record. I am at a loss to perceive under what rule of evidence such a document can be admitted, or have any legal weight though its genuineness were unquestioned.

If the original letter of Figueroa, of which this forged document purports to be a copy, were now produced and its genuineness admitted, it could not certainly be admitted as the best evidence to prove the act of the Deputation, for the record (or a certified copy of it,) of the proceedings and acts of that body would be better, and the proper officer, under the former government, to certify such record, was the person having the custody of the archives of the government—the Secretary—and if such certificate or certified copy had been issued and afterwards lost, it would not be competent to offer a copy of such certificate or certified copy, but recourse must be had to the record again, or else its existence and loss must be proved. The act referred to in Document No. 18, purports to be an act of the Government, conjointly with the Territorial Deputation.

and even if the original document, of which it is alleged to be a copy, namely, the original letter of Figueroa, were competent evidence of such act, as being a certificate of what was done, and recorded as all acts of government and the Deputation must have been to have any validity; still, the loss of the letter must be supplied, not by a copy or proof of its contents, but by having recourse again to the original record, or proving its existence and loss.

But if it were admissible to give evidence of a copy or of the contents of the letter of Figueroa, no sufficient evidence has been given. The only witness who speaks on that point is Gen. Vallejo, and he does not say that either exhibit No. 4, nor exhibit No. 18, was copied by him from the original, nor that he ever compared either of them with the original. It cannot, therefore, be considered as a copy, or admissible as a copy, under the rules of evidence applicable to the case. No evidence has been offered of the *contents* of the letter of Figueroa, nor does Gen. Vallejo testify that he has any recollection of such contents, distinct from the said exhibits. The said exhibits are offered as copies, and as, up to this time, they are not proved to be such, by any competent evidence, they must be rejected, and not considered as part of the evidence in the case. What evidence is there, then, of the establishment of the Vallejo line? There is none whatever. Counsel for claimant have argued as if Gen. Vallejo had testified to the *fact* that the government with the Deputation had established or approved that line as the limit on one side of some pueblo. He has testified to no such thing, nor would parol proof of that fact be admissible. Again, there is no evidence whatever that any genuine document or record of any kind, relating to the alleged act of government, ever existed in the archives of government. No witness says so. No genuine document says so. The *existence* must be proved clearly before the loss can be proved, and both must be clearly established before any inferior evidence can be admitted. More than this, it is proved beyond all doubt that the document referred to by Gen. Vallejo was not one referring to the demarcation of any *Pueblo*. Gen. Vallejo says he put that document, whatever it was, in the archives of the pueblo. The keeper of the archives, as may be seen by reference to the second and third depositions of Francisco Sanchez, and the law on the subject, was the Secretary of the Ayuntamieuto. Every communication and every document, after being seen by the Alcalde, was passed into his hands to be archived. Sanchez was Secretary from the organization of the Ayuntamiento till that body ceased to exist. He swears that he saw no document containing or referring to the demarcation of limits to any *Pueblo*. The only limits ever designated, as he says, were those of the *Partido* which he describes. He was also the Justice of the Peace in 1842 and 1843, and as such had still the custody of the archives. He was also commandant of the Presidio from 1837 to 1840 and from 1845 to the American occupation. Surely, no one could know better than he whether such a document ever existed. In additiou to this, it is in proof that every person who has had the custody of the said archives from the time the Ayuntamiento was first organized in 1835 to the American occupation in 1846, except Hinckley and Guerrero, is now living, and all of them have been almost daily in attendance at this Commission. Why has not some one of them been called to prove the existence and the loss of the alleged document. Gen. Vallejo says he put it in the archives of the *Pueblo*. Is it not most clear that if he did put it there, he has forgotten its contents, as he very well may have done after the lapse of twenty years; for that no document expressing the limits to any *Pueblo* ever existed in those archives, seems to me to be beyond all doubt. The deposition of Capt. Halleck as to what he saw in the Alcalde's office, in 1849, is of no legal weight, as he does not describe any document, and, if he had done so, being entirely unacquainted with the hand-writing of Figueroa, never having even seen the man, he could give no legal evidence as to the genuineness of any document purporting to be from him. All that he says respecting the archives of the Departmental Government is equally irrelevant to the question, whether any record had *existed* on the subject of boundaries: for *neither he, nor any other man, living or dead, pretends to have ever seen or heard of the existence of any such record in any place.*

Gen. Williams, on Saturday last, paid a merited compliment to the character of my friend, Gen. Vallejo, as I am informed. I thank him for it, and I am sorry my health did not permit me to be present to hear it. It is the only senti-

ment in his whole argument, I believe, which was ever expressed before, at least by any gentleman of his abilities.

It seems to me, therefore, that the conclusion is inevitable without impeaching anybody's veracity, founded upon all the facts and documents, that no limits were ever ever fixed by any act of the Territorial Government as limits of a town in this present county, unless it should be those marked out by Captain Richardson in 1835, and described on the map annexed to his deposition in this case including the land at Yerba Buena from California or Pine street to North Beach, and extending west about as far as Stockton street. That this survey was made, the map formed and remitted to the Governor, and the plan approved by him provisionally in his official note, dated Oct. 20, 1835, (p. 31), is proved by Richardson's deposition, and the original document on file in this case, the genuineness of which are acknowledged by Governor Castro in his deposition (p. 48), and is not brought in doubt by any evidence in the case.

Having thus adverted as briefly as possible to some of the leading facts, I will proceed to consider the points of law, observing in the outset that the claim appears to me to be not only invalid, but destitute of any foundation. In this respect, it differs from all the adjudicated cases. It is, perhaps, the first time in the history of judicial proceedings, in which a tribunal has been gravely asked to pronounce in favor of a claimant who offers no proof of any right or title to the thing claimed. Truly the parties interested in the confirmation of this claim must "live by faith alone."

§ 1. The first point to be considered in the argument of this case is, by what law is the claim to be determined? It will at once be admitted that it must be governed by the Mexican laws, under the sanction of which the rights of the claimant, such as they may be, must have had their origin.

§ 2. The Independence of Mexico, so far as respects the effect of Spanish legislation, is reckoned from the 23d day of Sept., 1821, when she was denied a representation in the *Cortes*. Spanish laws of a date subsequent to this, are not recognized as having any operation in the Republic, but all those of a prior date which were not repugnant to the new political system continued to have the same force after, which they had up to the time of the Independence. It may may seem superfluous to refer to authorities in support of a doctrine familiar to those having the slightest knowledge of Mexican jurisprudence. To elucidate it, however, I will adopt the language used in the introduction to the "*Collection de decretos y Ordenes de las Cortes de España que se reputan vigentes en la Republica de los Estados Unidos Mejicanos.*"

§ 3. "The Independence of Mexico having been happily realized by the occupation of its Capital on the 27th Sept. 1821, and the overthrow of the Viceroyal Government, although the bonds of dependency on Spain remained forever broken, the laws which regulated the rights and duties of this new society could not nor ought to remain without vigor, since it not being possible to replace them but in the transcourse of time, and by the authorities competent, the sudden abolition of them all would have been the establishment of a state of anarchy at a time when order was most needed.

"Thus it is that with the exception of those laws which conflicted directly with the the plan of Iguala, and the new order of things which it created, all the rest which had emanated from the kings of Spain, and the sovercign authority which to that time had been recognised, were acknowledged and respected. Suits were decided by them; justice was administered in conformity therewith, and by ther tenor the Mexicans regulated their social life. Hence, the Spanish Codes, to which others entirely national have not yet been substituted, are sought after with eagerness by judges, professors, and even private citizens, as in these they encounter the standard of their actions, the guaranty of their respective rights, and the rule of their judicial proceedings."

"Notwithstanding that Mexico is independent of Spain," says the author of the Febrero Mejicano, "she is yet governed by the codes of her ancient metropolis, because (as say the History of the Law, new ed. of D. Juan Sala), circumstances which it is not necessary to mention, have prevented the substitution of others entirely national, to those which in many parts are repugnant to the character of a free and independent nation, and much more to the system of Government which has been adopted.

"They subsist, however, in all other parts, and are now the rules of the actions among the Mexicans, who find in them the sum of their rights when not determined by national laws. For this reason is indispensable the study of the Spanish Codes, from which are are deduced nearly all the doctrines of this work." (1 Feb., Mej. 28.)

The same doctrine is authoritatively declared in a "Consulta" of the Council of State, addressed to the Supreme Government of Mexico, Sept. 20, 1838, on the question referred to them whether the laws of the old States, now Departments, ought to be considered as remaining in force after the establishment of the consolidated Central Government.

§ 5. "To resolve this question," says the Council, "we will make some observations which perhaps may conduct us to a correct conclusion. It ought principally to be noted that *all* those laws are in force, which not being directly repugnant to the system which rules, are not expressly abrogated by some posterior disposition, this rule having its application even with respect to those laws which were dictated in very remote epochs, and under the different forms of government which the nation has had. Thus it is that the tribunals and other authorities, daily resolve the different subjects of their cognizance according to the decrees of the Spanish Cortes, the laws of the *Partidas* and the *Recopilacion* provided that these dispositions do not partake more or less of the form of government under which they were dictated," and concludes with the opinion that the laws of the old States ought to be regarded as remaining in force, which was adopted by the Executive and communicated to the Governors of the Departments, in order that it should be observed as a *general rule*, (*Coleccion de leyes y Decretos importantes, etc.*, 1838–9, p. 130.) The foregoing proposition and the authorities cited, refer only to those rules and dispositions established by the Supreme Power, the *Legislator*, and intended to have the force and effect of *laws*.

The orders and dispositions of other departments and functionaries not invested with the legislative authority, cease with the Government that issued them.

§ 6. It is a fixed rule of interpretation in Mexican Jurisprudence that, the former law must not be deemed changed by the posterior any farther than it is so expressly declared. The reason is because the correction of the laws being *odious*, it is avoided whenever possible by construction, always endeavoring to reconcile them and not admitting the change without necessity. (1 Feb. mej. p. 17.)

§ 7. In determining any question in Mexican Jurisprudence, the codes are to be consulted in the following order after the constitution and laws of the Republic and of the particular State in which the question may arise.

1. The latest dispositions of the Spanish Government made applicable to New Spain and *communicated* in the usual form though not inserted in the recapilation of the laws of the Indies, and having respect to those of latest date in all cases of conflict.

2. The laws of the *Recapilacion* of the Indies, and if they should be found conflicting, giving effect to those of latest date.

3. The *Nueva Recapilacion* including the *autos acordados* of the Supreme Council, and observing always the dates in order to resolve any doubt arising from real or apparent conflict. (1 Feb. Mej. 49. Refers l 1 and 2, T. 1. Lib. 2, R. I.)

4. The Laws of the *Fuero Real* and the *Fuero Juzgo*.

5. The Statutes and Ordinances of each city, provided they have been confirmed by the Royal Council, (or the Legislative authority), and be not opposed to the principles of religion or any written law.

6. The Laws of the *Siete Partidas*.

7. If after consulting all the Codes, Constitutions and Statutes mentioned, an express law cannot be found applicable to the particular case which has occurred, it must be decided by some other law for similar cases which can be accommodated to it by parity of reason. (*Alvarez Derecho Real y de Indies, v. 1, p.* 58–60.)

§ 8. The *Novisima Recapilacion* not having been at any time ordered to be observed in New Spain, nor communicated in the usual mode, nor having been adopted by the Legislative authority since the establishment of the Republic, is

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not regarded as an authoritative code in Mexico, and consequently to determine the force and effect which any law found in it ought to have, it must be referred to its origin. (1 Feb. Mej. 39.)

§ 9. The distinction which exists between an executive regulation and a *law* must also be constantly borne in mind, for the executive can only provide for the *execution* of the law, and consequently a regulation or decree of the Government conflicting with any existing *law*, whether an act of the Mexican Congress, or a law found in any of the codes referred to, is void ; and as observes *Lares* in his *Derecho Administrativó*, *p.* 19 : "neither the judical nor administrative tribunals are under any obligation to obey illegal *reglamentos*," and the council of Government in the *consulta* already referred to, expressly say, that regarding the laws of the old States as *Vigentes* (remaining in force) in all things not directly repugnant to the ruling system, it is of no consequence that the Supreme Government may have dictated otherwise for its dispositions must never be placed above the laws.

§ 10. The proposition which I now propose to make clear by reference to various laws and authoritics that will be cited in the proper place, is : That towns in Mexico as in all Spanish countries, (and I might add in all countries in the world) enjoy the rights, privileges and franchises which have been specially conceded by the sovereign authority, and although by virtue of some general laws, the mere fact of their *corporate* existence would entitle them to some *political* rights, such as to have a local Government, constituted in the manner which these laws prescribe, yet in respect to property, real or personal, they can claim only such as has been expressly granted to them, or which they have acquired by purchase, or by some other legitimate title, in the same manner and subject to the same laws as individuals ; that is to say, that the formation of Ayuntamientos, the election of Alcaldes, or other officers, establishment of limits to towns, *Partidos*, districts, or provinces, has nothing to do with *property*, but all property, real as well as personal, which may be included within such limits, when established, belongs to the same proprietor that it did before—some to individuals, some to various corporations perhaps, as churches, hospitals, monasteries, and some to the sovereign.

And when the law guarantees to the towns their privileges, offices, uses, customs and franchises, (as in L. 1, 2, 3, 4 and 5, T. 2, Lib. 7 R. and L 3, T. 5, Lib. 3, R.), rights, revenues and *propiós*, (as in L. 1, 2, T. 5, Lib. 7, R.), *Aldeas*. fortresses &c., (as in L. 6, T. 5, Lib. 7, R.), it speaks of those things which have been expressly granted to them, or acquired by some legitimate title, and is only in affirmance of the principles of natural justice, equally applicable to the rights of individuals and corporations ; and when it gives a solemn pledge to preserve to the towns and cities in Spain, their *terminos comunes or valdios Ejidos*, *montes* and *pastos*, (as in L. 1 and 2, T. 7. Lib. 7. R.), and that the sovereign will not sell any part of the *terminos publicos* or *valdiós*, (as in L. 8 and 10, T. 5, Lib. 7. and in L. 11). which refers to the solemn contract between the King and people known as the "*Condicion de Milliones*," it has exclusive reference to the vacant lands in Spain, of which the citizens of the towns had enjoyed the use in common for many centuries, and proposes the perpetuation of a system of policy in reference to the public lands which was completely abandoned in 1813.

In order to understand this subject properly, we must have reference to the dates of the laws cited, and the actual state of the country and its legislation at the time. The laws of the Recopilation already referred to, were promulgated, as we have seen by their dates, at various periods, from the year 1325 to 1609.

The towns and cities were not by any means equal in respect to their political rights and franchises, nor in respect to the lands and property which they enjoyed, nor were they all subject to the King as their *immediate* Lord.

To show the position in which they stood in these respects, and how they acquired their respective privileges and franchises, I will translate some passages from a work entitled "*Leyes Fundamentales de la Monarquia Epañola*," by *R. P. Fr. Maguin Ferrer*. "As a result of the invasion of the Moors, the dominions of the King of Spain had been reduced to the mountains of *Asturias*. It was proposed to reconquer the country, and the chiefs of the people who had united with D. Pelayo, continued in the meantime acquiring lands, and the king

gave them the government and the property in the lands of certain of the *Pueblos*, while he himself remained owner of the lands of other districts *(Comarcas.)*

"By degrees, as this system created by circumstance, acquired consistence, so that no one perceived that it had acquired the character of a *system*, the principle became firmly established, that the king was to be considered in two characters, the one as particular Lord of the *Pueblos* and lands conquered, which continued as his own private patrimony; and in this respect he was on a footing of equality with the other lords in regard to their respective estates. The other as universal lord *(Senor)* of the kingdom, or that which is the same thing, as the Sovereign, and in this character he commanded the subordinate lords and governed the kingdom" (p. 146, vol. 1.). "The right of property is founded in natural law. and absolute sovereignty being itself subordinate and subject to this right, it follows that it cannot dispose of the right of property.

Let us take the idea of property as it was understood in those times in relation to the subject of which we are treating. When the king gave lands to the lords *(Señores)*, it was considered that he gave them not only the dominion and property in the fields *(campos)*, the vineyards, the woods, the houses, &c., but that he gave them likewise the right of *Government* and *Jurisdiction* over the persons who inhabited the lands, so that the particular lords were the proprietary governors and judges of their respective dominions, administering them conformably to the general laws of the Kingdom (ib. 147).

§ 12. Thus passed three centuries, the king governing the monarchy as universal lord. and *customarily* administering the affairs of the *Pueblos* of his own patrimony as their particular lord. But in the year 1050 or 1012 perhaps, Alonzo V.. desiring to give more regularity and solemnity to the politcal and judicial administration, called together the Council or *Cortes*, and promulgated the special laws called the *fuero* (law or franchise) of *Leon*, among others of a general nature promulgated for the whole kingdom. This is the most ancient *fuero* (franchise) which can properly be so called, and in it are comprehended some thirty laws reputed as municipal. in as much as their observance was restricted to the city of *Leon* and its *Termino* or *Alfoz* (the district over which the municipal government extended its jurisdiction."

From that time the municipal system took its origin, without its being then perceived, however, nor its effects being foreseen, and which in time came to represent one of the three estates of the Realm.

Whether it was because the kings understood the beneficial results that would follow from giving to each one of the cities and *villas* a written *fuero* (code) by which it should be governed; whether it was necessity that compelled them to concede these *fueros* in order to attract people to come and settle the cities that remained deserted, or the desire to distinguish the *pueblos* that belonged to their particular dominion from those which pertained to other lords; it is certain that thenceforward, date the *fueros* granted successively to *Najera* by *D. Sancho* the elder of *Navarra*, to *Sepúlvedda*, *Logroño* and *Sahagun* by *D. Alonzo VI*, to *Jaca* by *D. Sancho Ramirez*, to *Toledo* by *D. Alonzo VII*, and other cities and *villas* by the said kings or their successors, who either granted them new *fueros* (franchises) or gave them some one of the primitive, as, for example, *D. Alonzo VI*, who rebuilt the city of *Oviedo*, giving it the *fuero* of *Sahagun*. Following the example of the kings, various of the particular lords likewise gave *fueros* to their respective *Pueblos, although it was with the express consent or by the command of the Sovereign, for the lords of the Pueblos had no legislative authority.* Thus it was that the Bishop of *Palencia*, D. Ramon II, gave *fueros* to that city and its council with the consent, will and concession of our Lord *Alonzo*, King of *Castile*. The master of *Santiago Pedro Fernandez* to the citizens of *Castrotoraf*, by the good pleasure of the King *Ferdinand*, and by his command; and to those of *Ucles*, by the will and order of the King *Alonzo* and his wife Eleonor, and when it happened that any lord gave *fueros* without the license and consent of the king having preceded, he confirmed them afterwards, if he thought proper, as he did in the case of the *fuero* of *Madrigal* granted to the Bishop of Burgos, D. Pedro, saying that he gives and grants to the citizens of Madrigal the *fueros* (franchises) which were given them by D. Pedro, Bishop of *Burgos*.*

* No corporation of any class can be formed without express royal license and authority.—

§ 13. The franchises (*fueros*) given by the King to the cities and *villas* produced without at first perceiving it, the innovation that each city and each *villa* came to be a particular *Señor* which governed its citizens and administered the affairs of its *Termino* or *Alfoz* (district,) in the same manner that the Lords (*Señores*) governed their respective lands, with the only difference, besides the accidental ones which existed in their charters (*cartas forales*), that the dominions and authority of the Lords was vested in an individual, while that of the cities and villas was vested in a corporation (*cuerpo*) called a *consejo*, the members of which, as I have already said, and shall have occasion to repeat a thousand times, were heads of the principal proprietary families. And I will observe here that for the same reason that the king ceased not to be the absolute Sovereign in the estates of the particular Lords, because the rights, the dominion, and the jurisdiction of these was a legitimate property which belonged to them, so, neither did he cease to be so of the cities and *villas*, because the dominion and the jurisdiction of the latter over their respective citizens was a property which the king had given them in their charters (*cartas Pueblas o forales.*) With this explanation, which is the extract of all the histories, and all the authentic documents of the first four centuries of the restoration, will be discovered the capital error of some statesmen, who, giving an aspect and sense contrary to facts and writings, have pictured Spain sometimes under the odious point of view, as being governed by the Feudal system, and sometimes under the enchanting view of a system almost Republican.

The system, or rather the fundamental law was always the same, that is to say, that the lords governed their particular estates with perpetual right, dominion and jurisdiction, but subject to the dependence and pre-eminent dominion of the Monarch. Only there was a period in which all the estates which formed the patrimony of the King, were governed by the latter as particular lord, with appeal to himself as sovereign; and there was another period in which the King as sovereign made donations by means of charters (*Cartas Pueblas y forales*) to the cities and *villas* of all *or a part* of the rights and properties which he held as particular lord, in the same manner that in the first ages of the restoration he made these donations to private persons, who for this cause were denominated *Señores.* That is to say that in the second epoch in like manner as the estates of the particular lords were under the immediate dependence of a single individual who transmitted his rights to his successors, so the lands that were of the royal Seigniory, were under the immediate dependence of many individuals who formed the Council (*Consejo*), and who as a body corporate (*cuerpo*), was the perpetual possessor, the individuals changing conformable to the laws.

§ 14. I have already said that when the King gave *fueros* (franchises) to *Leon*, he sowed, without its having occurred to any body, the seed which in time was to vary fundamentally the entire administration of the affairs of the kingdom. The Monarch had obligated himself in the charters (*Cartas Pueblas y forales*) not to impose any tributes but such as were therein expressed. The expenses of the war becomes every day more exhorbitant, and were in inverse proportion to the royal revenues, for the sovereign had to sustain this war, not only for the purpose of adding new territory to what had already been conquered, but to avoid the loss of what he yet possessed; and the day arrived in which, being totally destitute of the necessary resources to continue it, and seeing the flourishing state of his cities, especially those which were removed from the frontiers of the Moors, and being unable to exact new tributes according to the franchises (*fueros*) which he had granted and confirmed with an oath, he saw himself reduced to the necessity to petition them to grant him the resources required. To this end he called together in the *Cortes* the *Procuradores* of the different cities; he unfolded to them the necessities of the kingdom to which his revenues were inadequate, and treated with them respecting the means which they could contribute in order to escape from the exigency equally prejudicial to the sovereign and the *Pueblos.*

It was natural that the cities should accede not only for the benefit that would result to themselves, but because of the new honors which the Sovereign did them in giving them a voice and a vote in the *Cortes.*

(*Dou, Instituciones del Derecho Publico General de España.* V. 1, p. 273.) In addition to the charters referred to, see extracts given by *Henao*, of the charters of Bermeo, *Bilboa* and other towns in Spain.—(*Averiguaciones, &c., pps.* 189, 90, 204, 247.)

§ 15. Besides the rights of the partieular lords, and of the cities and *villas* whieh pertained to the kiug (that is, whieh were of the seignory royal) there were the *behetrias*, whieh were the *Pueblos* formed by foreign emigrants whom the Sovereign had invited to settle desert districts *(Comarcas)*, giving them the right to elect their respective Lord, who was to eontinue for life."

§ 16. There was also a fourth species of seigniory reeognized in Spain during the period referred to by the author just eited, ealled *abodengo*, whieh was a portion of the seigniory and jurisdiction royal in eertaiu *Pueblos* whieh the kings eeded to ehureh es, monasteries and prelates. (See for a more eomplete explanation of this subject, note 2 to tit. 8 lib. 1, *Fuero Vicjo de Castilla* by *Asso & Manuel*, and the "*Adiciones*" to the preliminary diseourse to this eode by *Pedro José Pidal*.)

§ 17. But the rights, privileges, exemptions and property of all the *Pueblos*, whether seignorial, *Realengos*, *behetrias* or *abadengos*, depended in eaeh ease, upon the express eoneessions made by the Sovereign, or by his eommand, or with his subsequent approval and eonfirmation, in their respeetive town eharters or *cartas Pueblas*, and whieh privileges and exemptions were not uniformly the same in all the towns, but varied aeeording to the terms of their charters as before stated by the author eited.

Neither were all the *Pueblos* or towns—of whieh there were many elasses and grades—bodies eorporate; but mauy, indeed the greater number of them at the date of the laws of the *Recopilacion* before referred to, were destitute of any jurisdictiou or independent rights, privileges, exemptions or property, being subjeet to the jurisdiction, eontrol and government of the eorporate *villa* or eity within whose *termino*, *alfoz* or *demarcacion* they were situated.

D. Vieente Vizeaino Perez, advoeate of the Royal Council, in the eelebrated work entitled "*Compendio del drecho Publico y Comun de España*," speaking of the formation of towns in general, after observing that in Spain they eanuot be formed without royal license, says, "These unions of inhabitants have different names; some are ealled *Aldeas*, *Lugares*, *Arrabales*, *Pagos*, *Villas*, *Ciudades;* and all these *Poblaciones* take their title eonformably to the *Privilegios de Poblacion*, whieh the Sovereign eoneedes to eaeh one; (v. 1, p. 331;) and the same author, speaking of the *Villa*, whieh, *per sé*, possesses jurisdiction, honor, district and right of patronage, lays it down as an incontestible principle, that "The King or Sovereign Prinee, alone has authority to grant privileges, (*privilegios*) or titles of *villas* or to eonstitute any *Lugar* sueh, and no other ean do it, though he be owner (*dueño*) of the Territory."

§ 18. These eharters, privileges, exemptions and royal eoneessions of every name and nature, after being first signed with the royal hand of the Sovereign himself, were to be next recorded word for word, and then sealed by the Chaneellor, for whieh purpose the Notary of the Kingdoms of Castile and Leon, who held the keys of the are or ehest in whieh the great seal was kept, were to present it to that high funetionary (L. 1, 9, t. 15, Lib. 2, R.), and by the laws of Spain and the Indies this registry was essential; the aet or eoneession not only being *incomplete*, but expressly declared to be null and void without it. (L. 4 and 7, T. 4, Lib. 2. R. I.; L. 2, T. 5, Lib. 3, N. R.)

§ 19. We aeeordingly find speeified in detail, in L. 3, T. 8. Lib. 2, O. R., whieh is L. 10, T. 15, Lib. 2, R. the fees to be paid to the *Chancilleria* for sealing eaeh of the various eharters, privileges, grants, &e.

"Firstly, when we eommand to give our eharter *(carta)* with new franehises *(de fuero nuevo)* to any *villa* there shall be paid for the seal 600 *maravedis*."

"For the charter (*carta*) in whieh we eommand to make new proof and give them hereditaments of *termino poblado* (a settled distriet) there shall be paid for the seal, 300 *maravedis*, and if the *termino* be not *poblado* (settled) there shall be paid 120 *maravedis*."

"If we give to any eity or *villa* a great *termino poblado*, it shall pay for the seal 600 *maravedis*, and if it be *termino yermo*, (a desert district) there shall be paid for the seal, 300 *maravedis*."

"And if the *termino* whieh we may give to any eity or *villa*, be as large and valuable as some others that may be *poblado*, they shall pay for the seal to the eharter, *(carta)* 600 *maravedis*, and if it be *aldea*, 300 *maravedis*."

"If we exempt any eity or *villa* from tax or toll, there shall be paid for the

seal to the *carta* for each of these, 600 *maravedis*, and if it be *aldea*, 300 *maravedis*."

"But if we grant such exemptions to a *villa* and district *(tierra)* one fee shall be paid for the *villa* and another for the district. If the *aldea* exercises jurisdiction *per se*, it shall pay for the said *carta* 300 *maravedis*."

"If we shall exempt any *lugar* from the jurisdiction of another city, or *villa* or *Merindad* and give jurisdiction *per se* there shall be paid for said charter 600 *maravedis*."

"If we shall grant to any city, *villa* or *lugar feria* (fair or right to hold one) it shall pay therefor, 200 *maravedis*, and if it be *feria* or *ferias*, *francas*, (in which goods are allowed to be sold free of duty) there shall be paid for the seal for one fair in the year, 1000 *maravedis*, and for two fairs in the year, 2000 *maravedis*."

"If we shall grant to any city, *villa* or *lugar mercado* (the right to hold a public market,) there shall be paid for the seal to the *carta* 200 *maravedis*, and for a free market, 2000 *maravedis*."

The fees to be paid for confirmations and for grants made to individuals of cities, *villas*, *aldeas*, *lugares*, castles, fortresses, offices, titles, and other things belonging to the crown or perogative royal and which could only be granted by the Sovereign Power are also minutely specified.

§ 20. We see therefore, that the laws of the Recopilation of Castile (§ 10) so frequently cited in our courts, recognizing certain rights, privileges, exemptions and property in towns, refer to such as had been conferred by special and formal acts of the Legislative Power, and prove this, and this only, that the sacred right of property, founded in the law of nature itself, was respected by the Sovereign, whether vested in individuals or corporations. But to cite these laws for the purpose of establishing the fact that a town is the owner of any specified or defined tract of land, store, apothecary's shop, rural estate, or other property, would be no less absurd, than to cite in support of some private individual land claims, L 7, T 13, Lib. 4. and L 6 and 10, T 10, Lib. 5, of the same Recopolation, to establish the fact that the claimant had acquired a valid title to the property described in his petition, because these laws contain guaranties equally ample in favor of the private property of individuals.

§ 21. The following language of D. Francisco Antonio De Elizondo one of the most eminent of Spanish Jurists in his "*Practica Universal Forense*"(v. 5, p. 226.) is but a repetition, in more direct, concise and unequivocal terms of the proposition, with which I have set out in my argument, and therefore, if that celebrated author, who was a member of the royal council, in which, subjects affecting the rights and property of towns were daily discussed, may be supposed to have understood them, at least, as well as any of us, it will not be necessary to add any thing further on this point.

"*No hay cosa alguna diputada por derecho para pertenencia de los pueblos mas que aquella, que ò por privilegio de los principes, Costumbre, ò disposicion de los hombres entre si les està concedido.*" *

There is nothing designated by law as belonging to towns, other than that which by royal privilege, custom or contract between man and man, may have been granted to them.

§ 22. It will be observed that I am not *now* speaking of "*terminos comunes*," or of *solares valdios* destined for *repartimiento*, distribution to actual settlers in towns. To avoid repetition, I shall reserve my observations and authorities with reference to this class of *public lands*, until I come to refer to the laws of the Indies and Mexico, regulating the colonization and settlement, the distribution of lands, and the formation of towns.

But I am speaking of the vested corporate rights, the *property* of towns which the laws guaranty to them, and protects in the same manner as the rights and property of individuals, and which they acquire by the same modes, and subject to the same legal rules, requisites and restrictions, with this only difference, that towns being reputed as minors, and under the perpetual tutilage of government, can neither purchase nor alienate without its special license, *(Derecho Administrativo*, p. 121, 194–95, *Teatro de Legislacion*, p. 136.)

§ 23. Let us refer now again to L. 2, T. 5, Lib. 7, R., which has been as often misunderstood and perverted as it has been cited in our courts.

* To the same effect is Greg, Lopez on L. 9, T. 28, P. 3, see post § 51.

"Our will and pleasure is to preserve to our cities, *villas* and *lugares*, their rights, revenues and *propios*, and not to make any grant of anything thereof: Wherefore we command that the grant or grants, which of them or any part thereof, we may make to any person whatever, be not valid." (A. D. 1325.)

Whether the term *Derechos* in this connection, signifies *rights*, as I have translated, or certain imposts, which, by virtue of an express concession of the Sovereign, some towns were permitted to levy on articles of consumption, is immaterial, for all the rights which they could claim must appear in the documents by which they were acquired, or in the general guarauties of the Common Law extending alike to individuals and corporations.

What were their revenues, (*rentas,*) and *propios* (property)? For these, also, they must show the documents,—the express grant (see aute § 21) or title. But in what did these revenues and *propios* consist? What particular things belonged or appertained to the *rentas* and *propios* of the towns? Not the *Solares, Valdios,* for in towns of Spain, which were more populous and more flourishing in the age of the Roman Emperors than at the present day, a settler or squatter would have looked in vain for vacant *solares* in the fourteenth century; some of them had even then been so long established, that the time and circumstances of their foundation were lost in the obscurity of remote and fabulous ages.

§ 24. But the *solares* in newly founded towns in the depopulated parts of Spain, as well as in the New World, were intended for alienation, for *repartimiento*, or distribution among actual settlers.

"Let the *solares* be distributed by lot to the *pobladores*, continuing from those which correspoud to the *plaza mayor*, and let the rest remain for us to make grant (*merced*) thereof to those who shall afterwards come to settle, or whatever our pleasure may be. (L. 11, T. 7, Lib. 4, R. I.; see also T. 17, Lib. 7, N. R. *De los despoblades y su repoblacion.*) But "our will and pleasure is to preserve to our cities, villas and *Lugares*, their *revenues* and *propios*, and not to make any grant of anything thereof," &c. Neither could the towns themselves, nor the municipal authorities at any period of time, either in Spain, or the Indies, or in the Mexican Republic, grant or alienate any property belonging to their *propios* or *rentas* without precedent license from the government, such license not being presumed by any lapse of time short of one hundred years. (Ante § 22, *Elizon do practica Forense Universal* v. 5, p. 233. 1 Feb. Mej. 305, *Law of March* 20, 1837, Art. 9.*) Neither can the said towns or their authorities encumber them in any manner (ib.) nor are they subject to embargo, seizure or sale by any judicial process. (*Delos' Jurisprudence Generale*, v. 3, p. 133. *Dictionnaire de Droit Normand title municipatite.*) The *Salares valdios*, or town lots which remained vacant after the distribution made to the first settlers, were not things belonging to the *rentas* or *propios* of the towns, but were intended to be alienated in full property in favor of those who should afterwards come to settle.

§ 25. But "the *propios*," says *Febrero*, "is that species of property, which by *some title* pertains to the commonalty of each *Pueblo*, and the revenues whereof are dedicated to the preservation of the civil State, and municipal establishment of the councils, comprehending likewise under this name, all those things declared to be such in virtue of any legal dispositions; *arbitrios* are certain duties, or taxes imposed by the supreme authority upon articles of consumption and commercial effects in those *pueblos* which have no *propios*, or in which they are so inconsiderable, that they are insufficient to meet the necessities of the municipality."

These are the revenues (*rentas*) of the towns. L. 1, T. 5, Lib. 5, *Nueva Recopilacion*, which is L. 2, T. 16, Lib. 7, of the *Novisima*, provides: "Forasmuch as it is our will and pleasure that the cities, *villas* and *lugares* be relieved in (respect to) their *propios*, we ordain and command that the *tiendas* (shops) and *boticas*, (apothecary stores) *alhondigas* (public granaries) and *lonjas* (exchanges) and *suelos* (sites for stalls or shops) which are in their *plazas* and markets, and which yield rent or might be rented, and *which were appropriated* to the *propios* of the said cities, *villas*, and *lugares*, and likewise the *offices* which they have,

* "In cases of *necessity* or for motives of public convenience, they." (the Governors) "may, with the previous consent of the Departmental Junta, grant license to the Ayuntamientos or authorities charged with the administration of the funds (*bienes*) of *propios* and *arbitrios* to alienate some part of said property, and any cession, donation or contract whatsoever made without this requisite, shall be null and void."

which are to be provided for and filled in the said cities, *villas* and *lugares*, and which yield them revenues thereby, (that is, by the sale of them being vendible,) which have been occupied or intruded upon by some persons unjustly, or with power which they hold in the said cities, *villas* and *lugares*, and pay no tribute or rent for the said *suelos;* that they be immediately restored to the said cities, *villas* and *lugares*, and likewise the said *offices*, and if any *cartas* (royal order) and grants of the things aforesaid shall have been given by kings, our progenitors, or by us, let them go for naught, and be obeyed and not fulfilled; and our judiciary for not fulfilling them, shall incur no penalty, although they may contain any derogatory clauses whatever (1433.)

(*To obey and not fulfill* is the observance of certain authorities in token of obedience and submission to superior authority, without actually carrying into effect what is commanded.)

§ 26. The revenues and *propios* in different cities and towns in Spain and Spanish America, consist in a great variety of productive property acquired at different periods and in different modes.—Lots leased out on ground rent,—rural estates, stands and tables (or rather sites for them) rented out on the Plazas, markets,—revenues arising from the supply of water for irrigations and family use by means of aqueducts, places and stalls in the *portales* around the plazas or public squares and in certain streets; offices rented out to Notaries and others in the *Cabildo*, (City Hall or Town House,) dues collected for anchorage in some sea-ports, and many other things differing in each place, and depending always upon some title or express concession. An account rendered of the *propios*, of the city of Havana and of the city of Santiago de Cuba for the year 1830 and 1837, which will be found in a work entitled *Bibliotica de Legislacion Ultramarina* (v. 5, p. 215), will illustrate this remark.

In the regulation on the subject of *propios* and *arbitrios* formed for the city of Mexico, in 1771, by José De Galvez, Visitor General of New Spain in pursuance of the King's command, it is declared in article 8, "among other revenues ought to be placed first in order that which is denominated of *propios*, and it consists of the shops and stalls of commerce, houses and appurtenances situate in the streets and lanes of Monterilla and S. Bernardo, in various annuities perpetual and redeemable, the pension paid by the contractors for the supply of meat, rent of tables in the slaughter house, the office of sealer of weights and measures of this capital (which was vendible) and the towns of the arch-bishoprick, and the income from the posts, and tables of the *plaza mayor*, the product whereof are destined to the payment of salaries, public works, charges, festivals, and generally the expenses of the Ayuntamiento." (*Manuel de providencias, economicas,—Politicas, para uso de los habitantes del Distrito Federal, by Rodriguez*, p. 173.) The revenue arising from the stands rented out on the plaza mayor is declared to belong to the *propios* by virtue of an express royal concession (Art. 12) and so that arising from duties levied on wine, brandy, vinegar and other liquors, (ib. Art. 21) as well as all the rest. By a royal *Cedula* of 30th Dec. 1694, the Ayuntamiento was authorized to grant out lots on enfiteutic rent, and apply the revenues thence arising to their *propios*.

§ 27. Some cities, *villas* and *lugares* of the Indies, had concessions from the crown for a limited time of the fines payable to the Royal Exchequer, which might be incurred within their jurisdiction to be applied to their *propios*, as may be seen by reference to L. 9, T. 13, Lib. 4, R. I.* By L. 1 of the same title and book, (of 1523,) it is also provided that, "the Viceroys and Governors, who may be thereunto empowered (*qui tuvieren facultad*) shall assign to each *villa* and *lugar* which may be newly founded and settled, the land and lots (*solares*) which may be necessary and can be given to it without prejudice to third persons for *propios*, and make report to us of what has been assigned and given to each, in order that we order the same to be confirmed," (A. D. 1525). The Viceroys and Governors, not all—or any of them indifferently, but such as may have *authority* from the king, the Legislative Power shall assign to each *new* town, not those already founded, but those which shall be newly settled, for the *propios* of the place, and consequently to be reserved from sale or distribution, the land and lots

* By the law of 20 March, 1837, Art's 5, 65, 112, 113, 172, the fines imposed by the Governors, Prefects, Sub-Prefects and Alcaldes are to be applied to the *propios* of the place where the finde person resides.

which may be necessary for that purpose, and make report thereof to us, not grant them, but advise us, so that we may grant them, or which is the same thing, order the designation made to be confirmed, by which act, the *title* would pass, qualified and limited, however, as in all such cases.

§ 28. In the division of the tract of land or *termino y territorio* which by *ordinanza* 88 and 89 *de poblaciones*, or L. 6, T. 5, Lib. 4, R. I., was to be given to the *empresario* who should undertake to found a *villa* by contract, a quantity of land is to be reserved for *propios* equal to that embraced by the *solares*, *ejido* and *dehesa*. "Let there be taken out first what may be necessary for the *solares* of the *pueblo*, and a competent extent for *ejido* and *dehesa* sufficient to pasture abundantly the cattle, which by ordinance the citizens are to have, *and as much more for the propios of the place.*" (*Ordinanza* 90, L. 7, T. 7, Lib. 4, R. I.) All this was regulated by express contract entered into with the Viceroy, *audiencia*, or some person duly authorized by the king, drawn up with great formality in numerous chapters and articles, and which contract was the law that governed the particular case. (*Ordinanza* 87, L. 25, T. 3, Lib. 4, R. I.) The lands to be reserved for *propios* were distinct from the *solares*, *ejido* and *dehesa* which were to be taken out of the tract before the lands for *propios* were assigned, and the latter were to be equal in quantity to all three of the former together. It is also provided by *ordinanza* 130 *de poblaciones* which is L. 14, T. 7, Lib. 4, R. I., as follows:

"Having designated a sufficient quantity of land for *ejido* of the town (*poblacion*,) and its growth in conformity with what is provided (in the preceding ordinances,) *let those who have authority* to make the discovery and new settlement designate *dehesa*, which must bound with the *ejidos*, in which to pasture the working oxen and horses, and cattle for the slaughter, and the ordinary number of other cattle which the settlers are required by the ordinance to have, and a good deal more which shall be *propios* of the Council," (the proper lands, or property of the Council, &c.) In art. 4, T. 14, of the royal instruction for settlements in Upper California, of 24th October, 1781, it is provided that, "the *solares* which may be granted to new settlers are to be designated by the *government* in the localities (*sitios*,) and of an extent corresponding to that of the land where the new *pueblos* may be established, in such mode that there shall remain formed *plazas* and streets conformable to what is provided by the laws of the kingdom, and in conformity therewith there shall be designated *ejidos* sufficient for the *pueblo* and *dehesa*, with tillable lands suitable for propios," &c.

§ 28½. We see, therefore, that the *propios* and *revenues* of towns consist of a great variety of things acquired by express grant, and that the lands belonging to the *propios* are entirely distinct from the lots laid out for settlement and private occupancy, as well as from every other class of lands, which may be within the limits and jurisdiction of towns. They are the lands granted, designated, described and located for that specific purpose, without which location, boundaries or description, there can of course be no valid grant.

§ 29. We have already seen that by the laws of Spain, not only is it the exclusive prerogative of the king [or since 1812 of the *Cortes*] to grant the title of *villa* to any place, and to designate the *termino* or demarkation of its jurisdiction, but that all the rights, privileges, property and exemptions which it can claim, must be derived from the same source. The same principle is declared in the law of 1627, which is L. 6, T. 8, Lib. 4, R. I.

"We ordain that any viceroys, *audiencias*, governors, or other ministers of the Indies, however superior in authority, do not for any cause, or reason whatsoever, confer titles of cities, or *villas* upon any *pueblo* or *lugar* either of Spaniards, or Indians, nor exempt them from the jurisdiction of their principal *cabeceras*, with admonition that it will be matter for accusation in the account to be taken of their official conduct, for this *merced* [favor] and faculty must be petitioned for in our Council of the Indies, and we declare void those titles, which in contravention of this law shall be conferred upon any *pueblo* or *lugar* whatsoever; and in respect to the *new towns and settlements* [nuevas poblaciones y fundaciones] let the dispositions [of the law] be observed."

This law is sixty-four years later in date than L. 2, T. 7, Lib. 4, R. I., and must be considered as modifying it, if any real conflict exists between them.

§ 30. We accordingly find that when it was proposed by the inhabitants of the *pueblo of Manzanillo* in Cuba, to establish local authorities at that place,

erecting themselves into a separate municipality, the *expediente* formed for that purpose had to be passed to the Council of the Indies in order to obtain the royal sanction; and as the title which was granted will illustrate several matters which we have to consider, I beg your indulgence while I read it in English:

"Don Ferdinando VII. by the grace of God, king, &c. In a letter of the 14th May of the year 1830, my Governor, Captain General of the Island of Cuba, reported to me the *expediente* formed at the instance D. Sebastian Romagoza, D. Pedro Olive, and D. Joaquin Clavelle, citizens of the new town called Port Royal of the Manzanillo in the said Island, with the intent that there should be granted to it the title of city and *villa*, independent of that of Bayamo, (founded in 1515,) with the right to have a local government sub-delegate of the royal *Haciendo*, Ayuntamiento and Public Notary, manifesting with that view its state of civilization, numerous inhabitants, commercial advantages, the inconvenience and disadvantage to which the citizens were subject, from having to go for the administration of justice by impassable roads, a distance of fourteen leagues to the *villa* of Bayamo, as likewise, the well-known advantage arising from the advancement of the settlement of that part of the Island contiguous to foreign parts.

"In order to proceed with the exactness which was requisite in affairs of this nature, it was ordered on the 21st of October of the aforesaid year, 1830, that my Governor, Captain General should appoint a person, in his confidence, to proceed to the *apeo* (judicial survey,) and demarkatiou of the lands of said *Pueblo* of Manzanillo, designating those necessary for *propios, ejidos, dehesa de labor*, (pasture land for working oxen and horses) and pasturage of cattle; that he should mark out with all possible exactitude the jurisdictional limits (*terreno jurisdiccional*) which were to be assigned to it and the *partidos* which it should embrace; that in defect of *propios* he should propose the *arbitrios* which he might deem proper to cover the municipal expenses, for which purpose he was to form an *expediente* with citations of the owuers of coterminous lands, or of those who might for any cause be presumed to have a right to be heard; that he should take proof of the exact number of souls in Manzanillo and of the neighboring *partidos*, which it might be proper to include in its jurisdiction; that he should select the edifice which ought to be set apart for the Council House (*casa de Ayuntamiento*) and prisons, or if there should be none suitable for the purpose, then of the land most suitable whereon to build them, forming plans, estimating the cost of the works, and proposing, at the same time, the means and *arbitrios* which he might thiuk least burdensome to defray the expenses, without detriment to my royal *Hacienda;* that he should form the municipal ordinances which should govern *ad interim*, for which, and all else that he might deem necessary he should give audience to the inhabitants in a *Junta* composed of four or five of the best informed; proceeding in all things with the greatest dispatch, without any vexation or oppression of the inhabitants, and that he should report all with his *informe*. In pursuance whereof, my Governor Captain General committed the execution of the aforesaid proceedings to the Lieutenant Colonel *D. Fulgencio De Salas*, who, as the result of his first investigation, manifested that the discharge of his commission was the work of a long time, and would occasiou a delay much to be regretted in the indispensable separation of *Manzanillo* from the jurisdiction of Bayamo, which without suspending the other measures, might be effected immediately, designating for the division line of the *termino* and jurisdiction of Manzanillo that marked by the *Estero* and *Cienega del Buey*, river *Gicotea*, river Tarquino as natural limits, closing the distance between the sources of the two rivers by two right lines, one extending from the *Gicotea* to the Buey, and the other from the Tarquino, by which demarkation, there remained in the new jurisdiction the *partidos* of Yara, Gua, and Vicana, leaving still in the jurisdiction of Bayamo, a territory much more extensive. Upon this exposition of the Commissioner Salas, my said Governor, (Captain General,) consulted with the superiutendent sub-delegate of my royal *Hacienda*, and both chiefs concurring in respect to the convenience and utility of the emancipation of Manzanillo, with the aforesaid demarcation, the former made report of all for the corresponding determination (of the king). The subject having been examined with all that mature deliberation which its importance exacted in my Council of the Indies, they acquainted me with their opinion in a *consulta* of the 5th June last, and conformably therewith, I have determined to concede the title of villa to the *pueblo* of Port Royal

of Manzanillo, in the said Island of Cuba, with the said jurisdictional territory designated by the Commissioner, D. Fulgencio de Salas, and the establishment of an Ayuntamiento, composed of two ordinary Alcaldes, which my Governor Captain General will appoint for the first time, and six *regidores*, declaring these last offices vendible and renunciable, with respect to which the *Intendente* will form an *expediente* and proceed conformably to the laws. Likewise, I have deemed meet to charge my said Governor, very particularly, that he take the necessary measures, to the end, that as soon as the Ayuntamiento be formed, it occupy itself in expediting, as much as possible, the proceedings commanded in the order of 21st October, 1830, at least, those which may take place most conveniently, and with the least expense, difficulty or delay, reserving to myself the prerogative to take measures for the appointment of sub-delegate of the four causes, (Justice, Police, War and *Hacienda*) in Manzanillo, whenever I may determine upon the *consulta* of my said Council of the Indies, with respect to the establishment in the Island of Cuba, of *Alcaldes, Magores Letrados* similar to what was done in Porto Rico, and considering that the advantages resulting from this concession are greater, with respect to the State than the citizens of Manzanillo. I have determined to declare it exempt from the services designated to those of this class in article 16 of the Royal Cedula of 3d Aug., 1801.

"In consequence, it is my will, that the said *pueblo* be perpetually styled and called *villa* of Port Royal, of Manzanillo, and as such use the jurisdiction corresponding to it with the possession of the pre-eminences which it may and ought to enjoy. Given in the Palace, 19th of August, 1833. "I, THE KING."

§ 31. From this document several important conclusions are deducible in harmony with the laws and authorities before cited.

1. That no power short of the Sovereign, could erect a municipal corporation at Port Royal, give to the inhabitants a separate jurisdiction and local government, and segregate them from that of Bayamo, in whose *termino* they had been comprehended, though fourteen leagues (nearly 40 miles) distant from it. The Captain General of Cuba, though possessed of the *omnimodas facultades*, the plenary powers of the Viceroys could not even take the initiatory steps, so as to create the slenderest inceptive rights or franchises, but forwarded the *expediente* directly to the king, by whom the initiatory orders were given. This is a practical exposition of L. 6, T. 8, Lib. 4, R. I., as late as 1830–3.

2. That a municipal corporation may be fully established with its *termino*, or jurisdictional limits marked out and defined, and its Ayuntamiento and other authorities fully installed, without giving that corporation any shadow of right to lands within its limits, or to any other property whatsoever. For at the time when the king signed the charter for Port Royal, not only had no grant of lands been made to the town, but the lands had not been marked out under the orders which the Commissioner, Salas, had received for that purpose, but to execute that part of the royal mandate, he had reported would be the work of a long time. There must be an *apeo*, a technical expression well understood in law, meaning a judicial survey, with many indispensable formalities. An *expediente* must be formed—there must be indispensably a citation of *colindantes* and "of all who, for any cause might be presumed to have a right to be heard." Of course on a subject so immediately affecting the inhabitants, as the demarkation of lands for their *propios, ejidos, dehesa de labor* and *pastos*, he must give them audience. All this, however, to be executed with that exactitude which is required in affairs of this nature would require a long time, and was left undone, and consequently when Port Royal got its charter, it got no grant of land with it, and although it was probable that at some subsequent day, some of the lands within the extensive territory which its jurisdiction embraced, would be surveyed off, assigned and granted to it; yet, nothing is clearer, than that at the time of its incorporation, it had no lawful claim to any particular tract of land within the three *partidos* which it embraced. Manzanillo had been a *pueblo* for a long time with a numerous population and a considerable commerce, when it was erected into a corporate town or *villa*, but the question of *pueblo* or no *pueblo* was not agitated, it seems, as affecting the question of lands or property; and although L. 6, T. 5, Lib. 4, R. I. was in force in Cuba, nothing appears to have been suggested

about *that four leagues square*, either by the inhabitants, the Commissioner, Salas, or the Captain General, nor by the learned Council of the Indies. The Commissioner was also required by the Royal Order of 21 Oct., 1830, to select the edifices for Council House and prison, or if there should be none suitable for the purpose, then the lands whereon to build them. These lands would of course be in the heart of the town and would be selected from some of the vacant or ungranted lots, the property of the king, and which, when selected, and reported to the king, he intended to grant to the town for the purposes indicated in the order. Had these lands been vested in the town from and by virtue of its establishment or incorporation, the Royal Commissioner would have nothing to do, but the town would select for itself and make use of its own lands for any municipal purposes not forbidden by the laws.

§ 32. I had proposed to defer my remarks on the subject of *Terminos Comunes* about which there has been so much legislation in Spain, until I should have occasion to refer the laws of the Indies, relating to the establishment and settlement of towns, and particularly the orders and regulations, which are made especially applicable to California. But the laws of the Indies were framed in Madrid by Spanish jurists who employed terms and expressions, the sense of which has to be ascertained from the then existing state of legislation in Spain; I shall, therefore, refer first to those laws of the recopiliation of Castile, in addition to that already cited, which are supposed to be applicable, and some of which are really applicable to towns in America, but which are too often considered as *conferring* rights of property, when it is scarcely necessary to say, they are intended only to protect such as have been legitimately acquired.

§ 33. L. 6, T. 5, Lib. 7, R., which is L. 1, T. 21, Lib. 7, N. R., commands, "that the councils, cities, *villas* and *lugares* which may have purchased, or gained by time, any *aldeas*, fortresses, or *terminos*, being in possessions, be not despoiled thereof without being cited and heard, and the right of each one being determined by law; and if in fact they be despoiled, that restitution be made without delay." (A. D. 1325 and 1432.)

There had been at the date of this law, as we have already seen, granted to cities and *villas*, as well as to individuals, *aldeas*, (small villages,) fortresses, *terminos poblados* and *terminos yermos* (settled districts and desert districts) by royal patent, and sometimes they had been possessed and held from time immemorial by which they were enabled to sustain their right thereto by the law of prescription. At one time it was doubted whether *individuals in* possessions of, and claiming the Seigniory of cities, *villas* and *lugares*, and exercising the civil and criminal jurisdiction without being able to show a royal patent therefor, could prescribe for the same as against the Crown, and it was resolved by L. 1, T. 15, Lib. 5, R. which is L. 4, T. 8, Lib. 11, N. R. introduced into these codes from the *Ordenamiento* of *Alcala*," that immemorial possession proved according to, and with all the qualities required by the law of *Toro* which is L. 1, T. 17, Lib. 10 R, shall be sufficient to acquire against the king any cities, *villas* and *lugares*, and jurisdictions, civil and criminal, and anything or part thereof, with all that to the *seigniory* and jurisdiction, are annexed and appurtenant." The *aldeas*, fortresses and *terminos* which might be in the possession of cities and *villas* might be gained by time, which would be regulated by the law last referred to, provided the possession was attended with all the requisites prescribed by the law of *Toro*. As to the extent and nature of the interest which the towns had in the *terminos valdios*, some authorities will be referred to in another place.

It is also ordained by L. 1, T. 7, Lib. 7, R. or L. 2, T. 21, Lib. 7, N. R., "That all the *ejidos*, *montes*, *terminos* and hereditaments of the councils of our cities, *villas* and *lugares* of our kingdoms and Seigneuries, which are taken and occupied by any persons whomsoever, on their own authority, or by virtue of any letters of ours, be at once restored and returned to the said councils whose they were and are. But we declare that the said councils cannot work (*labrar*,) sell nor alienate them, but that they remain (*sean*) for the common advantage (*pro comunal*) of the said cities (*villas*) and *lugares*, where they are situated, and if any persons have worked or occupied anything of the same, let it be immediately disoccupied. And we command the same with respect to the *ejidos* which the *pueblos* have and possess, that they be not cultivated for the production of grain, and if any one

shall have our authority so to do, let him send it to us, so that in view thereof, we may dispose accordingly as out pleasure may be, (A. D. 1329.)

§ 34. "The privilege of the University," says *Perez* (*Comp'o del derecho Publico y Comun, de Espana*, V. 1, P. 332) "or town (*poblacion*) are firstly, to have defined *terminos*, the designation whereof is in Spain, the *exclusive* prerogative of the Sovereign, and it being found to have been done by the King or admitted by immemorial custom, the said *terminos*, (that is the whole extent of territory embraced within its jurisdictional limits) or that which they comprehend, are properly called the endowment (*dote*) of the University, and the author refers in a note to the law of the *Ordenamiento Real*, which I have before cited (ante § 19,) and L. 1, T. 12, Lib. 4, R. I. which ordains the distribution of lands among settlers, and defines the various measures therein referred to.

"The division of lands was made by authority of the King of *Castile*. They never pertained by right to those who occupy them until the king donated them and their jurisdictions, *lugares*, *villas* and cities," (ib. 331.)

The *termino* is the territory, district, or jurisdictional domain assigned by letters patent to any town or particular Lord, and the town or rather its inhabitants had at the date of the laws first referred to, and indeed all times prior and subsequent thereto, the right of enjoyment in common to the wood, water and pasturage, and natural products of the whole *termino* assigned to it, *Elizondo Prac. Forense V.* 5, *p.* 230.

But the right of common use was not vested in the Council or Corporation which stood in place of the individual Lord as we have seen from the authorities cited (see ante § 13) for "*quis dominium jurisdictionis appidi, alicujus habeat, non est dominus comunium pascuorum illius oppidi quæ in hoc Lusitanæ regno, Baldios vocant, sed intiger populus et communitas eorum habet dominium*" (*Molina de justitia et de jure, Tract* 2, *Disput* 59;) and therefore the same author treating on the *montes* (Tract 2, Disput 38) and the unlawful or excessive use and destruction of wood and timber by one of the citizens or commoners, although he states that he is obliged to make restitution to the community, limits the liability in these terms:

"Neque tunc id totum restituere tenetur: eo quod oppidanus sit; et partem quamdam eorum sine onere restituendi portuit scindere sibique asciscere, solum ergo incrementum damni supra id quod sine restitutionis onere scindere potuit, tenetur restituere."

(Coveruvias Prac. Quaest. Cap. 37,) is to the same effect.

§ 35. But the right of common in cases dependent solely on the general laws of Spain and the Indies, and not originating in special privilege, grant or contract, that is the common use and enjoyment which the *vecinos* have in the *terminos publicos* and *consejiles* of the cities, *villas* and *lugares*, was only a precarious servitude existing by sufferanee in the royal lands remaining undisposed of, notwithstanding the numerous laws and authorities, which, when not well understood are calculated to induce an inferenee to the contrary, which did not restriet the *Sovereign's* full and absolute property in those lands, nor impede the free disposition thereof, a right which was fully exercised by the decree of the *Cortes*, of January the 4th, 1813.

To elucidate this observation let us refer briefly to the history of the subject, and then to the laws and the authorities.

"The Gothic laws or those of the *Fuero Juzgo*, which ever since the year 409 have superseded those of the Romans in Spain, were general in the kingdom and maintained for many centuries an equivalent system" (in regard to the respective rights of individuals, and of the University) distinguishing in the rules applicable, the cultivated lands from the *montes* and uncultivated lands.

"By right of conquest the Goths occupied two-thirds of the improved and cultivated lands as soon as they had subdued the country and established their Monarchy therein, leaving the remaining third in each *pueblo* to the ancient residents who were denominated Romans in the Gothic laws.

"This division on which is founded the private property and dominion of lands and estates in Spain, is that referred to in L. 9, T. 1, Lib. 10, of the *Fuero Juzgo* in which that distribution is required to be respected not only in favor of those who first acquired the improved and other lands included in the general division made at the time of the conquest, and the irruption of the Goths in the peninsula, but likewise in favor of their children and descendants, with the salutary view that

the conquerors and the conquered should form one nation, and that their families should continue firmly rooted and devoted to husbandry.

"The enjoyment (*apro vechamiento*) of the *montes* and uncultivated lands which were not included in the general distribution, remained common and promiscuous between the Goths and the Romans as the general patrimony of the people, as may be seen L. 10, T. 1, Lib. 10 of the *Fuero Juzgo*.

"This system, which endured for the three centuries of the Gothic Monarchy, defined the private dominion of individuals and the general dominion of each *pueblo*, the dispositions of those laws inclining to favor the distribution of the *montes* with equality among the citizens, (*vecindario*,) in order that all should apply themselves to the cultivation and improving of them, since, as observes *Alfonso de Villadiego*, "the indivision causes the improvement (*majora*) thereof to be neglected, which can only be secured by means of just rules which give to each citizen a definite participation in the enjoyment of the *montes*, their pasturage, acorns, wood, and other productions."

"Although the invasion of the Arabs diminished the splendor of the Gothic Monarchy, its laws maintained all their vigor in the country, since in the time of *S. Fernardo*, who flourished in the thirteenth century, the laws of the *Fuero Juzgo* were yet preserved in vigor, and that glorious king extended them to his new conquest of *Jaen*, *Cordoba*, *Sevilla* and *Murcia*, regarding them as the fundamental laws of the kingdom.

"The government of the Goths having endured from the beginning of the 5th till the 13th century, the distinction was inviolably observed in that whole series of eight centuries, between the private dominion and the municipal of the *terrenos publicos o' consejiles*, the latter being governed by the judiciary (*justicias*) and *Ayuntamientos*. As soon as the land was recovered from the Moors, the *Montes*, were assigned (*Aplicados*) to each town, (*poblacion*) in the general distribution and demarkation of (*terminos*) preserving substantially the system of the Gothic laws with all the enjoyment *alto y bajo* (in the mountains and vallies) with the exception of those lands which fell to individuals by distribution, gift, or other legitimate title."

"In some towns and localities the trees produced on lands of private ownership, were reserved to the common use, which practice still exists in various districts of the kingdom, so that the individual is owner of the soil, and the Pueblo or *comun*, (community,) of the wood and natural products," (*Escolano Practca del Consejo Real*, *v.* 1, *p.* 231.)

§ 37. The *terminos publicos* or *comunes* and *consejiles*, or the commons of towns, embraced all the public and vacant lands in Spain, the which were assigned to each town respectively at the time of the general demarkation of limits.

The uniform policy was opposed to their alienation by the Crown, to whom the property therein appertained (L. 8, 9, 10, T. 21, L. 1, 2, 3, T. 23, & T. 24 & 5, Lib. 7, A. R.,) and this policy was affirmed in the most solemn form, in the contract between king and people, known as *condicion de millones*, in which the representatives of the *pueblos* in the *cortes* granted to the Crown the sum of seventeen millions in aid of its necessities, (L 2, T. 23, Lib. 7, N. R.,) and the Sovereign promised for himself and successors not to sell vacant lands (*tierras valdias*) nor trees, nor the fruit thereof, and that the same should remain as theretofore, to the common use and enjoyment.

§ 38. In America, shortly after its discovery and first settlement, the use and enjoyment of all the vacant public lands were declared to belong to the citizens in common, (L. 5, 6, 7, 8, & 9, T. 17, Lib. 4, R. I,) which is understood to be restricted in the same manner as in Spain, to the citizens of the respective towns within whose *termino* or demarkation the said public and vacant lands may exist, unless some special provisions have been made to the contrary, as in L. 3, T. 8, Lib. 4, R. I., which ordains "that the Judiciary of the city of Mexico have jurisdiction, civil and criminal, within the fifteen leagues of the *termino* which has been assigned to it, provided that all the said termino (of fifteen leagues extended each way) be of *pasto comun* (common pasturage,) for all the citizens, dwellers, and settlers in New Spain, during such time as the same may be unoccupied with crops, as is provided in our laws and ordinances," which are those referred to above, namely:

"L. 6." The lands and hereditaments whereof we shall make gift and sale in the Indies, the sown crop being removed, must remain for common pasture, (*pasto comun,*) except the *dehesas boyales y consejiles* (A. D. 1536) L. 7, "the *montes, pastas and aguas* of the places and the *montes* embraced in the *mercedes* which shall be made, or which, we shall make of *seigneuries* in the Indies must be common for all the Spaniards and Indians, and we command the viceroys and *audiencias* that they cause this to be observed and fulfilled (A. D. 1533.) L. 8.

"Our will is to make, and by these presents we do make the *montes* of rustic fruit common, and every one may gather it and take away the *plantas*, (trees planted,) to set in his own lands, (A. D. 1533,) L. 5. "We have ordained that the *pastos, aguas and montes* remain common in the Indies, and some persons without our authority have occupied a great part of territory and lands in which they do not allow any one to put *corral*, nor bring hither their flocks. We command that the use of all the *pastos, montes* and *aguas* of the provinces of the Indies be common to all those who now are or hereafter shall be *vecinos* thereof &c,. (A. D. 1559.)

§ 39. But this common use and servitude created by these general laws, and sustained during so many ages, did not restrict the Sovereign's full and absolute property in those common lands of the *consejos* or *pueblos*, which, in the demarkation of limits, might be comprehended in their *terminos*, nor impair his right freely to dispose thereof; "for," says *Elizondo*, "the kings, fountains of jurisdictions are the owners, (*duenos* of all the *terminos* situated in their kingdoms, and as such can *donate* them, *divide* or *restrict* them, the same being true of their *pastos*, although the *pueblos* enjoy them, it being presumed that they are conceded only so far as respects their use and administration, the property remaining in the Sovereigns themselves, so that they may limit them afterwards, enlarge or restrict them, or give any new form to the enjoyment (*goze*) thereof, and hence it is, that the *pueblos* cannot alienate their *terminos* and *pastos* without precedent royal license and authority." *Practica Universal Forense*, v. 3, p. 107. See also 108–112.)

§ 40. The same author in part 2, chap 11, (v. 5, p. 226,) entitled, "*Recursos extraordinarios para la enagenacion y venta de los bienes publicos consejales*," treats more largely of the subject, and considering many misconceptions into which American Lawyers, and the courts, too, have fallen in relation to it, I beg your permission to copy his remarks at length.

"There is nothing whatever designated by law as belonging to towns, other than that which by royal privilege, custom, or contract between man and man, (*disposicion de los hombres entre si,*) is granted to them, so that, although there be assigned to the towns, (*poblaciones*) at the time of their constitution *a territorio and pertenencias*, which may be common to all the residents without each one having the right to use them separately. It is a prerogative reserved to the princes to divide the *terminos* of the provinces, and the *villas*, assigning to these the use and enjoyment, but the dominion remaining in the Sovereigns themselves.

§ 41. "The property (*bienes*) of the community of each *pueblo*, we find designated, by *Don Alonzo*, the Wise, and restricted to the fountains, *plazas, arenales*, (aluvions) in the banks or the margins of the rivers, *ejidos*, places where horses run, (*i. e.* race courses), *montes, dehesas*, fields, vineyards, and all other similar places, (*sitios*) which may be used by every resident, poor or rich, but not by those of another town (*poblacion*) contrary to the will of the *vecinos*.

"Upon these principles of power and prerogative rests the law established by the Catholic Sovereigns in Cordoba, on the 3d of Nov. 1490, prescribing that any person, whomsoever, to whom the king may have made, or shall make grants of any Cortijos, (a location in the country for gathering fruits and crops, and keeping small stock,) hereditaments and lands in the *terminos* of the cities, *villas* and *lugares* of the kingdom of Grenada, cannot, without *royal and special license*, fence up (*dehesar*) and keep to himself (*defender*) the herbage and other products which the land bears spontaneously, the same remaining open (*libre*) so that all the *vecinos* can consume it with their cattle, beasts and working oxen, the same not being, (at the time,) planted or sown, under the penalty that he who contravenes (this law) shall lose whatever right he may have and the lands to remain for common.

§ 42. "Upon the same principle of sovereignty, the princes may alter, restrict or enlarge the *terminos* once assigned to any town (*poblacion*) giving them new form, or revoking the ancient, without any *pueblo* whatever being able to acquire exclusive right to their *pastos* against the king, otherwise than by his privilege, (special grant,) or immemorial prescription.

"And from these antecedents, arises the justice of the *incontrovertible practice* in the recovery of lands called of *realengo*, (royal lands,) so that in cases of doubt they are to be adjudged such, the princes having in possessory and petitionary suits their demand so far established (*fundada su intencion*) that the possessor must be required to exhibit his title, and not doing so, that the lands may be applied to the royal patrimony.

§ 43. "We may reduce the *pastos* of the *pueblos* to four principle classes; one of *valdios* or *comunes*, another of *arbitrados*, (or those royal lands which to supply some special necessity, the *pueblos* may have been authorized by special license of the king, to inclose and rent out for a limited time in aid of the municipal funds,) and another of *propios*, and another of individuals, which it is convenient not to misunderstand by reason of the different rules which apply in this matter. The first are of the *vecinos* or commoners, (*i. e.* for their use,) exclusively, and in the second the former (*vecinos*) have the legal preference, which is recently so declared and not altered by the resolutions of the Councils. The same *tanteo* (preference in purchase, if he gives as much as another offers) belongs to the commoners in this class of *pastos acotados* (inclosed for private use) to their prejudice when the object of the *arbitrio* (means of raising funds) is verified, they paying the price without necessity of distributing all the rights of the community.

"The dominion in the *pastos propios*, (of the lands belonging to their *propios*) can not be disputed with the *vecinos* ever since the establishment of the legislation of the *Partidas*, in which, *speaking of them*, Don Alonzo, the Wise, thus expresses himself: 'although they belong in common to all the residents of the city or villa, whose they were, &c., the utility or benefit of their products belonging to the University.'

§ 44. "The application (*pertenencia*) of the *dehesas* or *pastos acotados* of individuals which exist within the *terminos* of the *pueblos*, is the last of the four classes into which we have divided their lands, the *acotamiento* (inclosure for private use) being the effect of *privilege*, or of that possession which supposes it, the lords of vassals in their jurisdiction having no power to donate any thing of the *bienes comunes* without royal authority, or to permit lands to be converted into (private) pasture to the prejudice of those to whom the use of them belongs, which power (*facultad*) is among the prerogatives reserved to princes and of which they make use for just cause, looking to the common good of the *vecinos*, it being important to the public welfare that the *pastos* be preserved, and that they reduce not their lands to cultivation contrary to (*en ofensa de*) their original institutions, (*sus primeros establecimientos.* So that we find prohibited the mutation of the *pastos*, even with the consent of the *pueblos*, without royal authority thereunto empowering them.

"Immemorial possession is another title, which, sufficiently proved (*bien probada*) (the which we may calculate is very difficult) has the force of title, concession and privilege for the *cerramiento* and *acotamiento* (conversion to private use exclusively) of lands in which the presumption of law is in favor of the *vecinos*, without the necessity of proving the dominion or right to their use, which is for him to prove (the contrary) who denies it, every individual of the *pueblo* being entitled to prosecute the popular action in order to resist the limitation or injury which the owners of vassals themselves may attempt against their *pastos*, and commons (*aprovechamientos.*)

"Hence it is that before the privilege, it must be presumed that the *pastos acotados* were common to the *vecinos* in whose territory they might be, because the *pueblo* and its inhabitants have already proved by law, their claim to commons (*aprovechamientos*) and *pastos* of the whole *termino* which was assigned them.

"To this presumption and legal assistance is added one other, which is, that as it is requisite when the privilege be conceded for the *acotamiento* (conversions to private use) that it appear that the necessary *pasto* is left for the citizens; if this circumstance ceases or varies, it is necessary likewise to moderate

the privilege, as it had its origins and was issued with a cause or condition which has prospective variations (*tracto sucesivo*) and is subject to the accidents of time so that the most delicate modifications which the privilege can receive and the least prejudicial to the holder (*privilegiado*) is to restrict him somewhat in the liberty to rent out his *pastos acotados*, requiring that he have respect to, and prefer the *vecinos*, without prejudice to their value in that which may be regulated as necessary or convenient."

§ 45. The lords of vassals can do nothing in the *pastos publicos* which may prejudice the other *vecinos* admitting strangers to participate in the benefit, or renting, or selling them, they being reputed, in respect to these points, as two *vecinos* only, and with the qualities of real co-partners (*compañeros*) with each other, without any other especial distinction, except that of being regarded as having a double personality with respect to the enjoyment.

§ 46. "Let us return to the consideration of the right which the *pueblos* have to the *pastos publicos* and funds (*ramos*) of the university, restricted purely to the use and administration of them. *Whence it* proceeds that *they cannot in any manner* sell or alienate them without *royal authority* therefor, for the extreme inconveniences which were represented by the kingdom assembled in the *Cortes* of Valladolid, in the year 1540 to the Señores D. Darlos and Doña Juana, his mother, which sovereigns came thus to ordain.

"From this antecedent, we deduce that the royal authorization ought to *precede every* alienation of public property, (*bienes,*) and rights of property, (*derechos*) the former not being presumed by any lapse of time, as would be any other extrinsic solemnity of an act, except where the alienation has transpired for a period over one hundred years, by which antiquity the presumption that royal permission was obtained *begins* to operate.

"For the same reasons the *pueblos* can not incumber with *censos* the public property (*bienes*) without royal authority, although the capitals may have been converted to their common benefit, and those who impose the incumbrance (*los imponedores*) prove it conclusively, (*plenamente,*) who must remain solely responsible for she satisfaction thereof, and not the *propios*, or any other public revenues (*caudales publicos.*)

§ 47. "In the legislation of the Indies, after designating the place in which the towns (*poblaciones*) are to be founded, and the circumstances which are to precede their establishment, it is ordained that there shall be assigned to them *dehesas* which shall confine with the *ejidos*, in which to pasture the working oxen and horses, and cattle for the slaughter [*corniceria,*] and for the ordinary number of others which the settlers are required by ordinance to have, with a good deal more, which shall be *propios* of the Council, [*consejo,*] the rest being used for tillable lands of which *suertes* shall be made, as many of them as there may be *solares* in the town, [*poblacion,*] L. 14., T. 7, Lib. 4, prescribing that if any individuals shall have occupied any lands of the public and municipal places, [*lugares publicos y consejiles,*] the same must be restored according to the law of *Tolido*, [which is L. 5, T. 21, Lib. 7, N. R, or L. 3, T. 7, Lib. 7, R.] and those which prescribe the manner in which restitution is to be made, and define the right of prescription when interposed as a defense by individuals, [L. 1, 2 and 3, T. 7, Lib. 7, R.] without the Viceroys and Presidents granting commissions for composition of lands, unless in cases of evident necessity, and with precedent notice to the king of the cause which may induce them to do so, in what places [*lugares*] the lands are, to what persons they appertain, how long they have possessed them, and the kind of timber plantations, and lands without trees. [This law dates 1618, nine years after L. 2, T. 23, Lib. 7, N. R. known as *condicion de millones.*] The *propios* [*bienes de propios*] being wholly governed, as respects the alienation of them by the laws of Castile, to which the special laws of the Indies are conformable. [See Laws of T. 13, L. b. 4, R. I.]

§ 48. "The necessity which the *Pueblos* have to obtain royal authority for the alienation of public property [*los bienes publicos*] being granted, it is indispensable that we now consider whether the Councils [*consejos*] can *per sè* [on their sole authority] dispose, so far as regards the administration, and good government, giving license to build in the places [*lugares*] of the University for the ornament, decency and convenience of the towns [*poblaciones*] or to construct

mills, fulling mills, and other improvements from which advantage will ensue to the community [*comun*] without the need of royal authority therefor, except in the Kingdom of Granada, where the mill seats [*sitios*] belong to his majesty, and they can only be used by way of renting for the benefit of the royal treasury for the time, price, and with the conditions that may appear convenient.

§ 49. "Señor Don Alonzo, the Wise, speaking of the public places, [*sitios publicos,*] and under what circumstances one may build in them, expresses himself in this wise: 'If any man commence building in the *plaza* or in the street, or common *ejido* of some *Lugar*, without authorization from the King, or of the Council, [*Consejo*] in whose land, [*suelo*] he may be doing it, then every one of that *Pueblo* can forbid so that he proceed not with the work, &c., which language, clear and explicit, shows at once that the license of the *Ayuntamiento* alone is sufficient in order to build in public sites and places, [*sitios y lugares publicos.*]

"In the same legislation of the *Partidas* treating of where, and in what manner a mill may be constructed near to another, it is prescribed [L. 18, T. 32, p. 3] that any citizen may build it in his estate, [*heredad*] or in land, [*suelo*] which may be of the *termino* of the King with authorization of his majesty, or of those of the community of the Council [*Consejo*] whose is the place [*lugar*] where it is desired to do it, in such manner that the course of the water do not impede the operation of the former, but leave it free to perform its functions in the same manner as before; all which obtains though there be opposition from the owner of the first, and he should allege that by reason of the new one, his mill will produce less revenue; and the same is to be observed in respect to the ovens which may be newly constructed.

"This legislative disposition rests upon the principle that the construction of mills, fulling mills and ovens or other buildings, is not an act of jurisdiction, but of pure dominion, conformably with which, and the natural liberty which men have to use their patrimony, they may execute those works in private rivers, and even public and navigable ones, without royal authorization, not in any manner impeding the natural course of the waters."

§ 50. We have heretofore seen by the references which have been made to express laws, to several eminent writers on the fundamental laws of Spain, and from numerous references to historical facts, showing when and how some of the principal towns in Spain and America first became invested with their corporate rights, revenues and property, that in all Spanish countries corporate towns can only be erected by royal charter, *cartas Pueblas* or *privilegios de poblacion*, within the terms of which *all their rights* are restricted, and that this incontrovertible principle prevailed at the date, and must be applied in the interpretation of all the laws which have been cited here or elsewhere from any of the Spanish codes, and moreover that the same principle has been recognised and uniformly applied in practise, at all times, even from the foundation of the Spanish monarchy.

§ 51. By a review of the foregoing observations of Elizondo, we find that they embrace the following propositions:

1. That towns have inherently no property, neither is any conferred upon them by general laws, but their claims to property are subject to the same laws, as those of individuals [see ante §§ 21, 40.;] and it must be remembered that he is speaking in view of all the legislation both of Spain and the Indies, and of the practise of the Supreme Council of the Indies as well as that of Castile of which he was a member. His work is upon the "*Practica Universal Forense de los Tribunales de España y de las Indias,*" and these Supreme Councils were the tribunals which had exclusive cognizance in most cases, of the subjects treated of in the observations cited.

Keeping this principle in view, we are enabled the better to understand that celebrated law of the Partidas [L. 9, T. 28, p. 3] cited by the Court in the case of New Orleans *vs.* The United States [10 Peters, 723.]

"Apartadamente son del comun de cada una cibdad o villa, las fuentes e las placas o fazen las ferias e los mercados e los lugares o se ayuntan a consejo e los arenalef que son en las riberas da los rios, e los otros exidos e las carreras o corren los cauallos e los montes, e las dehesas, e todos los otros lugares semejantes destos

que son establecidos e otorgados para pro comunal de eada eibdad o villa o castillo o otro Lugar."

Son del comun. Sed an quoad dominii usum tantum?" very pertinently inquires Gregorio Lopez. They are of the *comun*—of the comonalty of each city, &c., but by what tenure, what is the nature and extent of their interest? The celebrated author referred to, answers this query substantially in his observations upon the clause "*son establecidos.*" "Preterea quod hic dicitur [*que son establecidos*] non intilligitur quod *a jure* sunt statuti pro civibus: quia civitati vel castro de *jure* nihil coporale est deputatum quod sit de ejus pertinentia; nisi quatenus a lege, aut consuetudine aut hominum dispositione reperiatur conecssum," and after eiting several authorities in confirmation of this *maxim* [for such is its character in Spanish jurisprudence] concludes, "et ita potest intelligi ista lex cum dicit [*que fuessen establecidos*] scilicet, ab hominibus vel statuto: et sic quod verbum [*que*] ponatur restrictive": that is the word *que* restricts what is before said in this law, to those things which *son establecidos* [which are granted or acquired by some legitimate title] and the proposition is not, that the things referred to *are establecidos* but that those *which* are *establecidos*, not *a jure*, but by contract, or special act of the Sovereign power, are of the *comun* of each city &c., in which case the *documents* will show by what *tenure* they are held; because as the author observes, nothing corporeal is designated or specified by law as *pertinentia* of a town [civitati] except so far as the same may have been granted by *lege, aut consuetudine, aut hominum dispositione;* and it must not look for any rights of property deduced *a corpore juris* or from the *cuerpo del derecho*, nor understand this law as conferring or recognizing any such; but as referring to and protecting such as may have been legitimately acquired. And the words *son establecidos* must not be understood that *a jure sunt statuti pro civibus;* for the law *grants* nothing to municipal corporations or communities any more than to other corporations, or to individuals. There are many laws [though they are now abrogated] expressive of the sovereign will that lands shall be assigned and granted to towns, and there are just as many expressive of the sovereign will and pleasure that lands and lots shall be assigned and granted to individuals who may go to settle new places, but neither the one nor the other can found a claim of title upon those general laws, nor make out from them the slenderest equity conceivable.

§ 52. That after the limits of towns have been legally established, which can only have been done by act of the supreme authority [see ante § 17, 34,] the sovereign remains the absolute owner [see ante § 40,] of all the lands within those limits to which a legitimate title cannot be shown by individuals or corporations [ante § 42] ; that as such he may freely donate or distribute them [ante § 39,] that he may alter, restrict or enlarge the limits once assigned to any town, or revoke them at pleasure, and that no town can acquire any right even to the use of the lands embraced in them *as against the Sovereign*, unless by special grant or immemorial prescription [ante § 42], that is, in the same manner as any individual or other corporation; and the right of common, which the citizens enjoy, though exclusive of those of other towns, is not in exclusion of the Sovereign's right of property and possession, and consequently the only acts which the municipal authorities can do, affecting these lands, are such as are purely administrative and belong to the local jurisdiction, conferred by the charters. The council and judiciary [*justicia*] of towns exercise the local authority of the government. In the charters or *Privilegios de Poblacion*, is generally granted the power to administer justice in first instance to the citizens, as well as to exercise the local government *Politico-econimo* over all the inhabitants of the *Termino* or demarcation assigned to the city or *villa*. They cannot, however, inclose for their own or any private use, any portion of these lands without direct authorization from the sovereign proprietor. But "when a *Pueblo* finds itself in circumstances of necessity, and destitute of funds, it has been the custom to grant to it authority for a limited time, to break up [*romper*] sell or incumber some portion of these *tierras comunes* and inclose them for private use; and as this is an expedient [*arbitrio*] which is resorted to in order to relieve the urgency, they are distinguished with the name of *propios arbitrados.*"—[*Compendio del Derecho Publico y comun de España*, V. 1, p. 336 refers L. 5, T. 27, Cap. 28. Lib. 7, N. R.]

§ 53. Continuing now our references in support of the proposition contained in sec-

tion 35, and the deductions which I have just expressed, we shall find the whole course of Spanish legislation in harmony therewith. Respecting L. 1 and 2, already cited at length [ante § 33], and all the following of Tit. 21, lib. 7, N. R., a few general observations will suffice, in addition to what has been said already in the quotations from Elizondo, and the deductions drawn therefrom. The first law referred to speaks expressly of those things which have been purchased or gained by time-immemorial prescription, and which, to the extent of the interest that may have been thus acquired would constitute a legitimate property.

The remaining laws of this title and those of title 22, 23, 24 and 25, Lib. 7, N. R., show that the general policy of the Spanish government was opposed to the alienation of public lands, or their conversion to any other use than that of common pasturage, but they do not show or contain any evidence whatever that the towns or citizens thereof, individually or in common, owned *anything*, much less *any lands* except such as had been *conveyed* to them by the Sovereign or other proprietor—L. 2, T. 23, lib. 7, N. R., refers to the contract entered into by the King with the *Procuradorcs* of the towns of the kingdom, known as the *Condicion de Millones*, it being put as a condition to the grant of seventeen millions and a half, made by the towns or their representatives in the *Cortes*, to supply the necessities of the Royal Exchequer, and contains the promise confirmed with an oath of Philip Third, for himself and successors, that there shall not thenceforth be sold any *Tierras valdias*, nor trees, nor the fruit thereof, but that the same shall remain, for the use and enjoyment of his subjects, as they had theretofore, [A. D. 1609].

The preceding law in this Recopilacion which is from l. 8 and 10, T. 5, lib. 7 of the *Nueva*, and was promulgated in the year 1586, provides that judges shall not be appointed and sent out to sell or re-survey *Tierras Publicas y baldias* and that in cases where, for any cause, a re-survey of lands sold shall take place, the *Sobrante*—the overplus not included in the title issued, shall not be sold but shall remain for *Publicas* and *consejiles*.

These laws do not tend to prove that the sovereign was not the owner of the lands mentioned, but the contrary, except so far as the first part of the said L. 1, T. 23, Lib. 7, N. R., may be supposed to refer to the *propios apropiados*, or lands specially granted to municipal corporations, [*Derecho Publico y Comun de España* v. 1, p. 334–5], and which having been thus appropriated to private use, could no longer be denominated *baldios* or free lands [ib. 336.]

§ 54. The same remark may be applied to all the laws relating to the *terminos* of the cities, *villas* and *lugares*, "*Terminos comunes ò baldios.* [L. 4, T. 21, Lib. 7, N. R. L. 7, 8 and 10, same T. and Lib.] "*Terminos realengos y consejiles*" of the cities, &c. [L. 2, T. 22, same Lib.] "*Terminos Publicos*," &c. The general policy of Spain was opposed to the alienation of the royal lands. It was thought more advantagous that they should remain common and free [*valdios*] for the poor and the rich alike, in the several towns within whose demarkation they were, and that the citizens of those towns should be required to bestow their care and labor so far as necessary in the preservation and reproduction of the timber, wood, and shrubbery upon them, and, as is said in Art. 14 of the Royal Ordinance of 1749 [L. 14, T. 24, Lib. 8, N. R.] "it cannot be regarded as a burden upon the towns or the citizens thereof that they are required to bestow labor in the preservation of the timber already grown, or to plant anew the woods, and free lands [*montes y tierras baldias*] although they be the property of his majesty, [*aunque sean propios de S. M.*], because besides being obligated so to do, they enjoy the fruit thereof with pasture and shelter for their cattle;" by the increase of which and the more abundant supply of wood, coal, meat and provisions, their propios or private revenues would be augmented, [see also L. 22, T. 24, lib. 7, N. R. Art. 26]. The King, however, frequently did make grants of lands within the *Terminos* of the cities, villas and lugares, as may be seen in the law 2, T. 25, lib. 7, N. R., referred to in the remarks I have translated from Elizondo [ante. § 41.] and many others, but the owners were not allowed to exclude the citizens from the right of common except during the time that the land should be occupied with sown crops—the natural productions remaining free to all, unless such owner were empowered by royal privilege *specially conceded* for that purpose, to enclose and enjoy the lands exclusively.

The law of 15th June, 1788, however, which is L. 19, T. 24, lib. 7. N. R., and the decree of the Cortes of 8th June, 1813, abolish the right of common so far as respects lands of private ownership which the citizens of the respective towns had enjoyed from the earliest period of the Monarchy. The latter declares that all *dehesas*, hereditaments, and other lands of every class whatsoever pertaining to private dominion, be they free or entailed, are, to be thenceforth deemed as perpetually "*Cerrados y acotados*" [inclosed for private use exclusively] and the owners and possessors thereof may inclose them without prejudice to the *Cañadas* [paths] *abrevaderos* [watering-places] roads, crossings and servitudes [to which they may have been legally subjected, of course], enjoy them freely and exclusively, or rent them, as to them may seem most advantageous, and dedicate them to cultivation, or pasturage, or planting of trees [*plantias*] or to the use which may best suit them."

§ 55. The decree of the *Cortes* of 4th Jan. 1813, put an end to that system which has occupied so much of our attention, which had preserved for many centuries, the public lands for the common use of the citizens of the towns within whose demarcation or *termino* they were situated, and provided for their sale, distribution and reduction to private dominion. The utility of the measure had been well understood, and recommended by the most intelligent Spanish statesmen at different periods, but it was natural that the towns whose citizens enjoyed the free use of the lands and that most honored and privileged corporation, the "*consejo de la maesta*," representing all the herdsmen of the kingdom, as well as many of the churches and convents which enjoyed equal privileges within the *terminos* of their establishments, and the nobility and rich men, whose cattle "upon a thousand hills" were supported at the expense of the State, should resist it; and there was no period of time, till that which occurred from 1808 to 1813, when the old establishments were completely broken up, and Spanish society was reduced to its elements, that this law fraught with such advantage to the country could have obtained any general support. *

* Extract from the Informe of D. Gaspar Jovellanos on the expediente upon the agrarian law presented to the Spanish Government on behalf of the "*Sociedad Patriotica*" of Madrid to which the Expediente had been referred for its dictamen.

"If individual interest is the chief cause of the prosperity of agriculture, without doubt no laws can be more opposed to the principles of the Society (the Patriotic Society of Madrid) than those which in place of multiplying, have diminished this interest, diminishing the quantity of individual property, and the number of private proprietors. Such are those which by a species of political indolence have left without owners, and tenauts a valuable portion of the tillable lands of Spain, and withdrawing them from private cultivation, have defrauded the state of all the product which private interest might have derived from them. Such are the *baldios*.

"The Society characterizes this abandonment with the name of political indolence, because they can apply no other more decorous to the prejudice which has respected them (the *baldios*). Its origin ascends even to the times of the Visigoths, who occupying and distributing among themselves two-thirds of the conquered lands, and leaving only one-third to the conquered, had to abandon and leave without owners all those which the population greatly diminished by the war, was insufficient to occupy. To these lands was given the name of *campos vacantes*, and these are for the most part, our *baldios*.

"The war which had first caused the population to decline, opposed itself afterwards to its natural augmentation, which found other still greater impediments in the aversion of the conquerors to agriculture and every species of industry. These barbarians knowing only how to fight and to sleep, and being incapable of the toils and application which agriculture exacts, preferred the rearing of cattle to the gathering of crops, and pasturage to the cultivation of the soil. The consequence was that the *campos vacantes* would be respected as reserved for common pasturage, and the increase of the herds, and of this rude policy we find repeated evidences in our *Fuero Juzgo*.

"This legislation restored by the kings of Asturias from the time of Alonso the Chaste, adopted on the part of the Crown of *Leon* by Alfonso V., transferred afterwards to Castile and observed until the time of San Fernando, the same rural system was diffused through all parts, respected the more in the middle ages, as the character of those times had deviated less from that of the Goths, and the enemy being in the very heart of the empire, and almost always in sight, it became necessary to look to the flocks principally for subsistence, and increase the public wealth by means of an enterprize least exposed to the fate of arms. Even after the conquest of Toledo, the frontier territories which extended along Extremadura, Mancha, and New Castile, were more pastoral than agricultural, and their herds fed more upon common and open lands, than in private pastures, and meadows, which could no more be protected than the cultivated fields.

"The Moors having been expelled from our continent, the *baldios* ought to have been reduced immediately to cultivation. Public policy and charity cried out, the one to the other, for the increase of means of subsistence, which the augmentation of population made more and more necessary, but between them both, they took a direction altogether contrary to each other. Policy, finding deep-rooted the direful system of pastoral legislation favored it so exorbitantly that it made the *baldios* an exclusive property of the herds; and charity looking upon them as the patrimony of the poor exerted itself in preserving them for their use; neither the one nor the other having re-

§ 56. This law provides for the reduction to private dominion of all the *baldios* [free lands] and other *terrenos comunes* [common lands] called also *terrenos realengos* [royal lands, for such they were] as well as those pertaining to the *propios* and *arbitrios* of the towns, not only in the Peninsula [of Spain] but in the provinces beyond sea except the *ejidos* necessary to the towns, [art. 1]. The lands of *propios* and *arbitrios*, or rather the use of them, were recognised as the legitimate property of the towns, that is of course, where the town could show a title for them, [see *ante*, § 40–51], and consequently although the dominion remained in the sovereign, while the usufruct was vested in the towns, [see *ante*, § 46], the revenues which they had been accustomed to derive from them were to be compensated and supplied by some means to be proposed by the provincial deputations and approved by the *Cortes*, [art. 1], or in case the *suerte* to be given to a resident citizen should, for want of sufficient lands among the *baldios*, be assigned out of the *propios*, then a redeemable quit rent was to be imposed, equal to what the same *suerte* of land would yield annually during the five years end- with the year 1817, [art. 15]. The towns are not regarded as having any direct interest whatever in any otherlands, nor is any compensation provided. They are all to be alienated, the one half on account of the national debt, [art. 6], a portion of the other half as a reward to, and provision for, the support of the officers and soldiers of the army, [art. 9 and 10], and the remainder by way of *repartimiento* [distribution] among the citizens of the respective towns, who may be destitute of landed property, and shall petition therefor, [art. 15].

§ 57. The law is certainly treating of the *lands in towns*, which is the situation of all lands in Spain, because it is provided in art. 3d, that in the alienation of said lands, a preference shall be given to the citizens and *commoners* "of the *pueblos en cuyo termino existan*, [in whose limits or jurisdictional domain they exist], and in art. 6th, that in the hypothecation of the half of the *baldios* and *realengos* of the monarchy excepting the *ejidos* [for they are realengos—royal lands also], a preference shall be given to those claims which may be held against the nation by the citizens of those *pueblos a que correspondan los terrenos* [to which the lands appertain], and in art. 7th, that in the alienation on account of the public debt of this half of the *baldios y realengos*, or the part which it may be

flected, that making the enjoyment of the *baldios* common, it was but natural that the rich rather than the poor would reap the benefits, and that it would be wiser policy and greater charity to found upon them a treasure of subsistence by which to save from misery a great number of poor families, than by furnishing, in their common enjoyment, food for the cupidity of the wealthy graziers, and a useless resort for the indigent.

"Those who have aimed to secure the multiplication of stock by means of the *baldios* have greatly deceived themselves. Reduced to private property, *cerados* (shut up against the right of common) tilled, and seasonably improved, would they not produce more abundant pasturage, and maintain a considerably greater number of cattle.

"It will be said, that then, all would engage in agriculture, and in the same proportion, the number of cattle would be diminished. This proposition is not certain, for it can be demonstrated that the *baldios* reduced to private property and converted to the uses of pasturage and tillage, would admit of cultivation to a great extent, and maintain at the same time a number of cattle equal to, if not greater than at present. But suppose for a moment that it should be so; can it be denied that the nation which abounds in men and productions, is richer than that which merely abounds in cattle?

"If it should be feared that the price of meat, an article of primary necessity, would, take an extraordinary rise, let it be reflected, that when meat is dear, private interest will naturally be directed to the subject, and in that case, will not the rearing of cattle be preferred to cultivation from this very circumstance, without any other stimulus? So certain is it that the equilibrium which is to be desired in this matter is established better without laws than with them.

"These reflections will be sufficient to demonstrate to your Highness the necessity of decreeing the alienation of all the *baldios* of the kingdom. What a fountain of wealth would not this single measure lay open, when these extensive and fertile lands being reduced to private property, and the activity of individual interest being employed upon them, they shall be settled, cultivated, stocked with cattle, and produce in pasturage and husbandry to the utmost of their capacity!"

After discussing various details as to the mode to be adopted in the alienation of the common lands, the quantity to be assigned to a single individual, and the conditions of the alienation in particular cases, all of which would depend upon the peculiar circumstances of each Province, and the abundance or limited extent of these lands therein, the report proceeds:

"In fine, sir, the Society believes, that in the execution of this measure, no *general* rule will be suitable: that the execution of it ought to be preceded by the investigations necessary to accommodate it not only to each province but likewise to each territory (tract of country): that the execution being encharged to the Provincial *Juntas* and the Ayuntamientos under the direction of your Highness, would be carried into effect with prudence and impartiality, and finally that the most urgent is to decree the alienation immediately, in order to proceed to the rest. Let your Highness, then decree this beginning, and the good will have been accomplished." (See also Escriche Diccionario de Legislacion, title BALDIOS.)

deemed neeessary to hypothecate, a preference shall be given in the purchase, to the citizens of the respective *pueblos* and the *commoners* [who had to that time been] in the enjoyment of the said lands, and that in payment for the same, will be received at the par value, the claims which they may hold properly liquidated, for supplies to the national armies or loans made for the war since the first [which of May, 1808; and in art. 10 that the *suertes que en cada pueblo se concedan* in each pueblo may be granted] to officers or soldiers shall be equal in value, in proportion, &c.; and by art. 11th, that the *señalamiento* [designation] of these *suertes* [to officers and soldiers] shall be made by the Constitutional Ayuntamientos of the *pueblos a que correspondan las tierros* [to which the lands correspond or appertain] wirhout exacting from the parties interested *any costos* [expense] or *derechos* [fees] whatsoever, and that the *expediente* thereupon to be formed, shall be remitted in continuation, to the Provincial Deputation to be approved or modified; and in art. 15 that of the same remaining portion of *baldios y realengos* there shall be assigned *gratuitously* and for *once only*, by lot [*sorteo* from which comes *suerte*] a *suerte* [allotment] to each citizen of the respective *pueblos*, who may petition therefor; and by art. 17, that the *dilligencias* [initiatory steps and proceedings] for these coneessions shall likewise be taken by the Ayuntamientos [that is of the respective towns in which the lands are] without any expense whatever, and shall be approved by the Provincial Deputations.

§ 58. It is scarcely necessary to observe that the intervention which the Constitutional Ayuntamientos are to have in the designation of the lands, or the pointing them out, and locating them, for all the various classes of pretendants, as officers, soldiers, settlers, vendees, and public ereditors wishing to receive lands in satisfaction of their claims, is only that which is delegated by the government to the subordinate political authority most competent from their local knowledge and position, to discharge the duties assigned them; an intervention which was given by L. 5, 6 and 8, T. 12, Lib. 4, R. I., in all cases of the *repartimiento* [free distribution] of lands, and which I conceive is still requisite under the colonization law of 1824, and regulation of 1828, in places where such local authority exists, whatever irregular practice may have existed to the contrary.

§ 59. One observation in regard to the *Egidos*, which are excepted from the sale, hypothecation and distribution to be made under this law of 1813, not because they were not *baldios* and *realengos*, because in Art. 6, they are, eonstructively, at least, included in that denomination, but excepted ont of the haif to be reserved to be hypotheeated on account of the national debt, as they are likewise excepted from the general provisions of the first article. "Without prejudice to what is provided," [in the preceeding articles] "there is reserved the half of the *baldios y realengos* of the monarchy excepting the *ejidos*," &c, by which it may fairly be inferred that the *ejidos* were considered as included in that denomination.

The first article provides generally, for the reduction to the class of private property, of "all the *terrenos baldios o realengos* and of *propios* and arbitrios, wooded and not wooded, as well in the Peninsula and islands adjacent, as in the provinces beyond sea—*exeept the ejidos* necessary to the *pueblos*. The ejidos are certainly not excluded from the denomination of *propios* and *arbitrios* from the very character and description of this class of property, [see ante § 23 to 28] and they must consequently be included in the denomination of royal lands which remained *baldios* [free to all]. The lands of propios and arbitrios were *acotados* and *eerrados*—inclosed for private use, and by means of cultivation, pasturage or other private use, for which they were rented out, yielded revenue to defray the the municipal expenses. The *propios* in short consist of "that *property* which by some *title* belongs to the *comun* of each pueblo and the revenues whereof are destined to the preservation of the civil State, and municipal establisments," [1 Feb. 304—5 and ante § 25]. But the *ejido* yields no revenue. "It is the *campo* [open country] which is at the *salida* [exit] of the *cities*, *pueblos* and *lugares*, and which is not planted or cultivated. Its extension according to the law [L. 13, T. 7, Lib. 4, R. I.] ought to be as great as may be necessary, so that in case the town [*poblacion*] grows, there will always remain space enough for the people to recreate themselves, and let out their cattle without doing damage. From which it is clear that no fixed rule ean be given, but that it must

be altogether arbitrary, according to the circumstances of the magnitude of the cities, number of inhabitants, &c." [1 Feb. Mej. 312–13.] The author just cited divides the *bienes de universidad* into two classes in the first of which he ranks the *propios* and arbitrios, "which cannot be used by all, and which are only *administered* by the *ayuntamiento* or council of the city, and the fruits whereof are dedicated to the public utility," [ib. 304] and in the second class the ejidos, [ib. 312] which are for the common use of all the dwellers of that place, as well of the poor as the rich, but which cannot be used by those of any other *tierra* [place or town] contrary to their will or prohibition;" [ib. 304, 312, vid. L. 9, T. 28, P. 3.] and that exclusive right is founded, in the absence of any special grant, other than a mere political designation, upon the division of territory for political purposes, as may be inferred from the following words of Gregorio Lopez in note 10, referring that part of the law of the Partidas which is above cited in the words of Febrero: "*et recté nam divisio territorio hoc inducit,*" and the construction of it given by Febrero; "*cuyataxitiva dice Erpez, la induce la division del territorio*" [which restriction, says Lopez, is founded on the division of the territory]. If the observations of Gregorio Lopez on the words "*son establecidos,*" used in this law of the Partidas, which I have already transcribed, [ante § 51] be considered as repeated here, I shall have no more to say about *ejidos* at present; observing generally, that after the decree of the Spanish Cortes of 4th Jan. 1813, there remained no town commons distinct from *ejidos* in any Spanish country, where, as in Mexico, this law remained in force. In Spain itself, the radical reform which it proposed was not at once carried out, but the project was several times suspended, and again ordered to be carried into execution. While this law remained in force, however, in consequence of the royal decree of 15th April, 1820, Mexico became independent, and although, upon the restoration of the absolute government in Spain, in 1823, its execution was again suspended there for a time, this did not affect its operation in the Mexican Republic, where it has always been considered as remaining in full vigor.

§ 60. The town commons in Spanish countries were all the lands public and private, embraced within the *termino* or demarcation of the municipality, except those which by special authority from the Sovereign, were *acotados* and *cerrados.* The decrees of 4th January and 8th June 1813, destroyed the whole system. The former authorized the sale and distribution of the *royal lands* in the towns, and the latter, allowed individual owners to inclose and use their own lands to the exclusion of all others. There remained after this, no commons to towns, which might not at any time be disposed of by the sovereign proprietor. The laws which permitted the citizens to use the public lands in common, remained in force, but the ancient system which proposed the reservation of them for this purpose, was abolished, and the lands were, in accordance with the new and wiser policy, to be reduced to private dominion as quickly as possible: (see report of committee on agriculture in the *Spanish Cortes* on this subject, 12 Diario de Cortes p. 99, see post § 109.)

§ 61. In continuation of my reasons for the several propositions hitherto maintained, and which for the sake of brevity I refrain from repeating, reference will now be had more particularly to the legislation of the Indies and of the Mexican Republic, which has, or has been supposed to have some material bearing upon this subject. Most of my efforts thus far have been employed in clearing away rubbish—in correcting and refuting what I conceive to be errors, so that the truth, which in this case, is very simple, may not be obscured by them. This part of my task is not yet finished, but in the farther prosecution of it, I beg the attention of the Board in the first place, to some laws, regulations and orders supposed to be applicable, but which in truth are not so. Such are *ordinanzas* 88 and 89, 100 and 101 *de poblaciones,* first promulgated in the royal statute under that title by Philip II. in the year 1563, and which articles were afterwards inserted in the Recopilation of the Indies published in the year 1680, and constitute laws 6, 7 and 10, Tit. 5, Lib. 4, which I will translate.

§ 62. L. 6. "If the situation of the country [tierra] renders it suitable for the settlement of a *villa* of Spaniards with a council of ordinary *Alcaldes* and *regidores* and there be some person who will take *asiento* [contract] to settle it [*poblarla*] let the *capitulacion* be made with these conditions [*calidades:*] that within

the time that to him may be assigned, it shall have at least thirty *vecinos*, and each one of them a house, ten breeding cows, four oxen, or two oxen and two steers, [or young unbroken oxen, whether steers or bulls,] one breeding mare, one breeding sow, twenty breeding castilian ewes, and six hens and a cock; he shall likewise appoint a clergyman to administer the holy sacraments, who shall be for the first time of his election, and afterwards according to our royal patronage, and he shall provide the church with ornaments and things necessary for divine worship, and give security that he will fulfill within the aforesaid time; and if he do not fulfil, let him lose that which he may have built [*edificado*] wrought [*labrado*] and gained [*grangeado*] which we do appropriate to our royal patrimony, and moreover let him incur the forfeiture of a thousand pounds of gold for our exchequer [*camara*]; and if he do fulfill his obligation, let there be given him [*se le den*] *termino y territorio*, four leagues square. [*cuatro leguas de termino y territorio en cuadro*] or prolonged according to the situation of the country in such form that if it be measured, there shall be [in quantity] the four leagues square [*sean las cuatro leguas en cuadro*] with the condition that the limits of the said *territorio* be distant at least five leagues from any city, *villa* or Lugar of Spandiards which may have been previously settled, and no prejudice be occasioned to any Indian Pueblo, or private persons."

§ 63. L. 7. "There being one who will obligate himself to build up a new town [*hacer nueva poblacion*] in the form prescribed, with more or less than thirty *vecinos*, provided they be be not less than ten, let there be granted granted him the *termino y territorio* in proportion [*al respecto*] and with the same conditions."

§ 64. L. 10. "Whenever any private persons agree among themselves [*se concordaren*] in the purpose of building up a new town [*en hacer nueva poblacion*] and there shall be a number of married men for that purpose, let license be given them, [*se les de licencia*] provided they be not less than ten married, and let there be given them [*deseles terminio y territorio* in proportion as aforesaid [*al respecto de lo que está dicho*] and we grant them authority to elect from among themselves ordinary *Alcaldes* and officers of the annual council." [See also "regulation and instruction for the Presidios which are to be established on the frontier line of New Spain—established by the King 10th Sept. 1772," Tit. 12. It is found in Arrillaga Recop. for 1834, p. 139—also order and instruction from the comandante dated 22d March 1791, Rockwell 451.—also Viceroy's instruction of 17th Aug. 1773, 1 Rockwell 444, all of which are equally inapplicable and irrelevant to this case.]

§ 65. These laws are of no assistance either for or against the claimant, because,—

1. They did not remain in force in Mexico after its independence.
2. They are wholly inapplicabe to the subject.
3. They do not establish, nor tend to establish the rights contended for.
4. They do not militate against any one of the propositions which I have advanced.

The meaning of a law is to be determined according to the intention of the Legislator, which is to be ascertained not arbitrarily, but by the application of certain fixed rules of interpretation, among which is one very evident and reasonable, that reference must be had to the context and the cotemporaneous facts, [1 Feb. Mej. 17.]

§ 66. The code entitled "*Recopilacion de leyes Indias*," is not a new statute, or collection of new statutes thus first promulgated. If it were so, we should have only to read it consecutively from beginning to end, in order to comprehend the just interpretation that ought to be given to any one of the distinct provisions inserted in it, and which for convenient reference is set down distinctly in the appropriate book and title. But this code is just what it purports to be, a Recopilation, a compilation, made up of many old laws, statutes and ordinances, for the government of the kingdoms of the Indies, made and promulgated at various distinct periods, during the transcourse of about one hundred and eighty years. The compilation was made by various learned advocates and published by authority of the King, who in a decree of 18th May 1680 declares what authority it is to have. But the laws inserted in it are for the most part, old laws, which had already been in force, for a long period, and these laws collected together

and inserted, are not changed or modified any further than it is so declared by some posterior disposition, nor is the just construction which ought to be, and was put upon them, and which is deduced from their eviden intention and import in any manner altered by their insertion in this code.

The laws, which I have just translated, are parts [arts. 88, 89, 100 and 101] of one entire statute, consisting of several hundred articles, enacted and promulgated in the year 1563, by Phillip II, under the title of "*Ordinanzas de Poblaciones*," and consequently. had already been in operation one hundred and seventeen years, when the Recopilacion was promulgated as a code.

At that early period, nearly the entire continent of the two Americas was yet undiscovered and unsettled, nearly all of which, with the adjacent Islands, and the Philipines, were claimed as comprehended in the dominions of the King of Spain. It was about forty years after the brilliant conquest made by Cortez in that portion of the country which has erected into a distinct kingdom with the name of New Spain. It was two hundred and six years before the epoch in which the first white inhabitants, under the guidance of Father Junipero, and the military escort of the Governor and Comandante D. Gaspar de Portalá, with D. Fernando Rivera y Moncada, second in command, and Lieutenant D. Pedro Fages, with a considerable force by sea and land set foot upon the soil of Upper California. The whole continent with the exception of a few scattered white establishments, supported by force of arms, in which the several subordinate governments then existing, resided, was in the possession of numerous and powerful tribes and nations of Indians. These vast regions were to be explored and settled. It was out of the question to expect that individual settlers, for the sake of finding land to to cultivate, would venture, unprotected, out of the reach of the guns of the Spanish Forts. Neither could any discoveries be undertaken at the expense of the Royal Treasury, nor any sums be expended for that purpose by any of the Viceroys or other functionaries in the Indies, without special authority from the king, even though they might be authorized to make discoveries, a prohibition which was incorporated in the ordinance of 1563, [art. 25,) which is to engage our attention, and of which the laws just cited constitute a part.

It was principally for the purpose of engaging individual enterprise, and private capital in the exploration and peopling of this vast continent, and the development of its mineral wealth, then known to be inexhaustible, that the "*Ordinanzas de Poblaciones*." were framed.

§ 67. It is provided in the first article [L. 4, T. 1, lib. 4, R. I.] that no person of whatsoever quality or condition, shall make any new discovery on his own authority, either by sea or land, nor establish any new *poblacion* (town or settlement) in the parts discovered or to be discovered without license from the king, or some one who is empowered by the king to grant it; and the Viceroys, Governors, and other officers are forbidden to grant such license, unless *especially* authorized, but they are allowed to give license for founding *poblaciones* in those parts within their *jurisdictions*, which have been explored and reduced, making report to the king immediately.

§ 68. In Art 2 it is provided that the superior functionaries, spiritual and temporal in the Indies, shall diligently ascertain whether in their districts or the countries and provinces coterminous therewith, not being under the government of others, there be any parts to discover and *pacify*, what number of people and nations inhabit the same and of the character of the land without sending warlike people or others who by their reprehensible conduct towards the natives, may scandalize the christian faith; and having informed themselves on these points by the best means in their power, and also of the most suitable persons to prosecute the exploration, they are permitted to enter into a contract, observing in framing it the laws respecting discoveries, and offering to such persons the honors and advantages which justly and without injury to the natives they may, and of all they may have ascertained and contracted, without putting it into execution, they are to make report to the vice-roy and through him to the Council of the Indies, in order that being seen and considered therein, the royal license may be given, if the discovery be deemed proper. (L. 1, T. 3, Lib. 4.)

The succeeding eighteen articles contain minute regulations respecting the kind

and number of ships to be employed in each expedition, the manner in which they are to be equipped, manned, apparelled and provisioned, goods and trinkets which are to be taken on board for the purpose of traffic with the Indians, the minute account that is to be kept of all that is discovered and observed on sea and land, the conduct to be observed toward the natives and the time when the ships must return.

§ 69. Articles 21 and 23 provide that those who shall have gone forth on voyages of discovery by sea or land by *capitulacion* (contract) made in the Indies, must return to make report (dar cuenta) to the government or audiencia with which they may have contracted (*capitulado*) which government or *audiencia* is to send an extended and complete relation of the discoveries and the results to the Council of the Indies; and that if the *descubridor* (the person contracting for making the discovery) possesses the necessary requisites, he may be encharged with the enterprise of settling the country discovered, or he shall receive the reward which he may merit for his labor and expenditures, having fulfilled his contract (*asiento,*) (L. 14, T. 1, Lib. 4.)

§ 70. In every expedition a journal is to be kept and read daily, before the whole company, and finally presented to the Council of the Indies, or in the audiencia where the report is to be made (Art. 22.) Indians are not to be taken from the parts discovered, except for interpreters and going voluntarily (Art. 24.) No discovery to be undertaken at the King's expense, (Art. 25.) The persons charged with making discoveries, are to be those of approved christianity, good conscience and zealous for the honor of God and the King's service; lovers of peace, and desirous for the conversion of the Indians, so as to satisfy the obligation which the King acknowledges himself under to see that the thing is done with all christian prudence, love and moderation (Art. 27.) Foreigners and other persons prohibited to pass to the Indies canuot be employed in discoveries, nor go out with the expeditions (Art. 28.) The word *conquest* is to be dispensed with in all *capitulaciones*, and in its place the words *pacificacion* and *poblacion* are to be used, so as to afford no preteuce for committing outrages against the Indians, (Art. 29.) The discoverers must observe the laws and the special instructions given them which are to be reasonable, and adapted to the character of the country they go to discover and the nations which inhabit it, (Art. 30.)

§ 71. No discoverer, nor *Poblidor* (contractor for the settlement) can enter into the district encharged to others, or which may be already discovered, in order to make settlements (*poblar*) or discoveries there, (Art. 31.) Articles 34, 35, 36 and 37 (L. 1 and 2, T. 5, Lib. 4,) speak of the circumstances which are to be observed by the *pobladores* in selecting locations for new settlements in cases where it should be resolved to settle any province or district among those already reduced, or which should thereafter be discovered.

§ 72. Article 39 and 40, (L. 1, T. 7, Lib. 4,) "Having made the discovery by sea or land, according to the laws and orders which treat thereof, and having selected the province and district (*comarca*) which is to be settled and the site (*sitio*) of the places (lugares) in which the new *poblaciones* are to be founded and contract therefor being made (*tomando asiento sobre ello*) those who are going to fulfil the same shall observe the form following, &c. "The site is to be elevated and healthy, and selected with a view to the shelter, capacity and defence of the Port—and from places which are vacant and can be occupied without injury to the natives or with their free consent. When the plan of the place is made, it is to be divided into streets and squares, and *solares*, commencing with the *Plaza Mayor* and extending the streets to the gates and principal roads, and leaving so much open space (*campo abierto*) that should the poblacion go on greatly increasing, it can always extend in the same form—care is to be taken to have water near by which can be conducted to the *Pueblo* and the lands. Places very high or very low are to be avoided, and those of medium elevation selected for settlement, which may enjoy the North and South winds. Mountain ridges and hills if they exist, should fall on the East and west, and care is to be taken to avoid places subject to fogs. Sites for Pueblos are not to be selected in uncovered, maritime places, for the danger of Corsairs—and because they are not generally healthy, and for the additional reason that there the people will not dedicate themselves to tillage and agriculture; nor will their morals be so well formed,

unless it be when there are some good and principal ports, and of these only may be settled (*se pueblan*) those which may be necessary for the ingress to (*entrada*), commerce, and defence of the country." (Art. 41, L. 4, T. 7, Lib. 4.)

§ 73. Art. 43 (L. 2, T. 7, Lib. 4,) is as follows:—"The country (*tierra*) province and place being selected in which is to be erected the new *poblacion*, and the circumstances and advantages thereof being ascertained, the Governor in whose district it may be, or on which it may confine, will declare the pueblo which is to be settled (*que se ha de poblar*) and conformably to what he may declare shall he formed, the council, republic and offices thereof; so that if it be a metropolitan city it may have a judge with title of *adelantado, alcalde mayor*, or *corregidor*) or ordinary alcalde, who shall exercise the jurisdiction *insolidum* (entirely) and jointly with the (*regimiento*) council, have the administration of the Republic; two or three officers of the Royal Hacienda; twelve *regidores;* two *fielcs ejecutores;* two *jurados* of each parish; one procurador general: one mayordomo; one *escribano* of the Council two *escribanos publicos*, one of mines, and one of registries; one chief crier (pregonero mayor;) one exchange broker; two porteros (summoners;) and if it be diocesan or sufrigan city, eight *regidores*, and the other permanent officers; for the *villas* and lugares, an ordinary alcalde, four *regidores*, one *alguacil*, one escribano of the council, one *escribano publico*, and one mayordomo." It must be observed, that this article empowers the superior authority of the proper district or province to declare what is to be the class and character of the *pueblo* which is to be founded and built by the Poblador referred to in the previous articles 39 and 40, whether it shall be a metropolitan or diocesan city, a *villa* or *lugar*, in order that the municipal government may be organized in conformity therewith; but it does not empower him to confer the *title*, much less to grant any privilcges, exemptions or property. That could only be done by the king himself, to whom *immediate* account was to be given, as prescribed in Art. 1. (ante § 67.) At least if it may be construed to embrace the authority to confer such title, it is so far abrogated by the subsequent law of 1627 which is L. 6, T. 8, Lib. 4, R. I., before cited (ante § 29) by which that power is expressly denied to any viceroys, audiencias, governors or other ministers of the Indies, however superior in authority. The form of the contract and the conditions of it under which this pueblo must be founded and built, are specified restrictively in other articles of the ordinance. The succeeding articles, 46, 47, 48 and 50 (L. 18 and 19,, T. 7, and L. 3 and 4, T. 5, Lib. 4) relate to the description of persons that are to be admitted to the company, or list of colonists which are to be taken out as settlers for the new towns to be founded, the appointment of municipal officers, payment of their salaries, registry of the names of the settlers, and the capital which each is to employ in the adventure.

§ 74. The articles which follow from the 50th to the 87th, exclusive, relate to discoveries, pacifications and settlements of countries and districts, not included in nor immediately bordering upon the district of any viceroy or royal *audiencia* by whom it might be conveniently governed, to be undertaken by some great capitalist at his own expense, by treaty made directly with the king with the title of *adelantado cabo principal* or *capitan*. The *adelantado* was invested with the superior government and jurisdiction in the provinces which he undertook to people, and was subordinate and subject to no authority but the king and supreme council of the Indies. If he discharged his undertaking in such a manner as to merit the royal approbation, he was to have the plaudit of "well done, good and faithful servant;" and thenceforth take rank among the first nobility of the old kingdom, (Art. 52, 86, 68, 69, 84, L. 2, 14, 15, 23, T. 3, Lib. 4); all of which, however, was to be regulated by contract. Among other articles (*capitulos*) to be inserted, one was that within a certain time to be specified, he should have erected, founded, built and settled, at least three cities and one province of *Pueblos Sufriganeos*. If he should contract to construct fortresses—he was to have the tenancy of them for the time, limited or perpetual, which might be conceded to him, his son, heir or successor, with competent salary from the royal treasury, or products of the country. (Art. 53, 54, 55 and 60, L. 8 and 9, T. 3, Lib. 4.)

He might establish weights and measures for the precious metals in the *Pueblos* of Spaniards, settled or to be settled, (L. 12, T. 3, Lib. 4, Art. 63.) In defect of

officers of the royal *Hacienda*, he might appoint them *ad interim* (Art. 64, L. 11, T. 3, Lib. 4). He might draw upon the royal treasury for any sums that might be necessary to repress any rebellion (Art. 65, L. 18, T. 3, Lib. 4). He might make ordinances for the government of the country and working of the mines, provided they were not contrary to law, and were confirmed by the Council of the Indies (Art. 66, L. 17, T. 3, Lib. 4). He might divide his province into districts, and appoint judges and other officers, assigning them competent salaries from the products of the country (Art. 67, L. 16, T. 3). He was himself to exercise the jurisdiction, civil and criminal, in grade of appeal from the Lieutenant-Governors, and the ordinary Alcaldes of the cities and *villas* which he founded, and this jurisdiction was transmissible to his son or heir, or successor in the government (Art. 68, L. 14, T. 3, Lib. 4). As the said *adelantado* or *cabo principal* was next subordinate to the Council of the Indies, no one of the viceroys nor coterminous *audiencias* were permitted in any manner to *intermeddle* with the affairs of his province (Art. 69, L. 15, T. 3, Lib. 4). If he found any judges already appointed in the province embraced in his *Capitulacion* on his arrival there, they were to cease acting immediately, and depart the country, unless they wished to stay as simple settlers (Art. 70, L. 13, T. 3, Lib. 4). He might appoint *regidores* and other officers of the *Pueblos*, which should be newly settled, provided the king had not appointed them, and those appointed by him must be confirmed within four years by the king (Art. 72, L. 10, T. 3, Lib. 4). If he contracted in Spain, and proceeded thence, royal *cedulas* were dispatched in his favor, allowing him to raise men and provisions, without any hindrance or interference on the part of any of the public authorities, and without giving them any account of the persons going out in his company, all of whom when once enlisted were to follow, adhere to, and obey him, without separating themselves from the adventure and going on any other voyage, on pain of death, (Art. 73, 74, 75, 76 and 77, L. 3, 4 and 6, T. 3, Lib. 4.) He was exempt from the payment of all duties on slaves, provisions, and supplies carried out for the subsistence of himself and the settlers under his orders for the period of ten years, and from the payment of *alcabalas* for the period of twenty years (Art. 78, 79, 81, 82, L. 7, 5, 20, 21, T. 3, Lib. 4). An account was to be taken of his official conduct (*residencia*) as in case of all other principal public functionaries, and if he had fulfilled, as he ought, his *asiento* (contract) he was to be commended as a faithful servant, and receive a grant of vassals in perpetuity and the title of Marquis or some other wherewith to honor his person and house (Art. 83 and 84, L. 22 and 23, T. 3, Lib. 4).

§ 75. It is next provided (Art. 87) that whenever discovery, pacification, or *poblacion* (settlement) is to be made of a province bordering on, or included in those of any viceroy or *audiencia* by *capitulacion* with a viceroy or *audiencia* or person in the Indies empowered to make it (the contract), it shall be conceded with the title of *Alcaldia Mayor* (superior Alcaldeship) or *corregimento* (corregidorship) by way of colony of some city of the Indies or of these kingdoms, or by way of *asiento* (contract) with title of Alcaldia Mayor or *carregemiento:* and to the *Cabo* who may contract shall be conceded the same as to the *adelantado*, except in all things touching the government, he is to be subordinate to the viceroy or *audiencia*, in whose district his may be included, or on which it may border, &c.

§ 76. The next two articles constitute the law which I have already cited, (ante § 62) and relates to the settlement not of "*any town*," as White's translation has it, (2 White, Recop. 44,) but of a particular class or *corporate* town—a *villa* which *per se*, and not as a dependency of some other place—possesses jurisdiction, honor, district, &c., (1 Comp. del Derecho Publico de España 340,) and the title and privileges of which, "the King or Sovereign Prince alone, has power to concede" (ib. 339.) It speaks of a concession to be made to the contractor for building up and settling the place which is to constitute the future *villa*, of a *termino y territorio*, not "four square leagues," as White has it, but *four leagues square*, (*cuatro leguas en cuadro*,) and not of the location of the land in such form that "when it be located and surveyed the four leagues shall be in a quadrangle," as White also has it, but in such form, according to the shape and circumstances of the country, that if it be measured, there shall be *in quantity*, the four leagues square comprehended in the boundaries assigned, (*sean las cuatro leguas en cuadro.*) This, however, depended upon the *capitulacion*, and a strict

performance on the part of the contractor; for if he failed to fulfill as he ought, he not only got no *grant*, but lost all the labor and capital which he had expended, unless an extension of time was obtained as provided in 93, art. L. 25, T. 7, lib. 4.)

§ 77. Neither was the *termino y territorio*, when granted, to constitute his private property, but was to be distributed as follows: [art. 90, L. 7, T. 7, lib. 4:] *first*, was to be taken out whatever might be necessary for [not the indefinite thing called "site of the town," as White translates, but] the *solares* of the *pueblo*, a competent extent for *egido* and *dehesa* which must lie adjoining it, [art. 130, L. 14, T. 7, lib. 4,] sufficient to pasture abundantly the stock which the citizens admitted as first settlers, were required by the preceding articles 88 and 89 to start with, and as much more for *propios* of the place. The remainder was to be divided into four parts, one of which the contractor was to select for himself. The other three parts were to be divided into equal *suertes*, equal in number to the *salares* [art. 130], which *salares* and *suertes*, after assigning to each of the first settlers those which they were to have for their respective private use and property [vid. art. 103, L. 9, T. 5, Lib. 4,] were to remain the property of the King, to be by him granted to such as might afterwards come to settle [arts. 127 and 130, L. 11 and 14, T. 7, Lib. 4.] The contractor might entail that part of *termino y territorio* which fell to his share, as well as the mines, &c. on it, [arts. 96 and 97, L. 24, T. 3, Lib. 4,] which power to entail property could only be exercised by special royal privilege, [19 *Teatro de Legislacion*, p. 433, L. 2, T. 17, Lib. 10, N. R.] and was to have, if so agreed, the jurisdiction, civil and criminal, in first instance, for the period of his own and the life of one child, or heir, with power to appoint ordinary *alcaldes*, *regidores*, and other officers of the council of the same *pueblo* [art. 95, L. 11, T. 5, Lib. 4.] If he took his colony from Spain, he and those accompanying him as settlers for the new town, were to be exempt from all duties and royal imposts on the things which they took for their houses and subsistence in their first voyage to the Indies, [art. 98, L. 2, T. 6, Lib. 4;] and finally says art. 99, which is L. 6, T. 6, Lib. 4. "In order to honor the persons and legitimate children and desecendants of those who may obligate themselves to build up a town [*los que se obligaren a hacer poblacion,*] and shall have concluded and fulfilled their *asciento*, we make them *Hijosdalgo de solar conocido*, so that in that *poblacion* and all other parts of the Indies, they may be *Hijosdalgo*, and persons of noble lineage, and *solar conocido*, and for such be deemed and held; and we grant them all the honors and pre-eminences which may of right be had and enjoyed by all *Hijosdalgo* and *Caballeros* of these kingdoms of Castile, according to the laws, usages and customs of Spain."

§ 78. *Capitulaciones* were to be admitted on these conditions, and with the offer of all these advantages and pre-eminences, with such others not inconsistent with this ordinance, or the laws of the kingdom, as might be agreed on, with any one possessing the requisite qualities and capital, and able to give approved security for his compliance, who could furnish at least twelve settlers for citizens of the new place to start with, and the *termino y territorio* to be assigned was to be in proportion, whether the number should be greater or less than thirty.

§ 79. If a number of married men, not less than ten [ante § 64, Ord. 101, L. 10, T. 5, Lib. 4,] should agree among themselves to go to the new country and build up a town [*hacer nueva poblacion*] the proposal was to be admitted by the government, and besides the conditions stipulated in other cases, they were to have the right to elect from among themselves ordinary alcaldes and officers of the council. But this was also regulated by express contract, as all treaties for new settlements were to be, which are contemplated in the articles hitherto cited from the ordinance of 1563, (see arts. 39 and 40, 45, 46, L. 18 and 19, T. 7, Lib. 4,) which contract or *capitulacion*, as it was called, because it was drawn up with great formality, consisting of many *capitulos* (chapters or articles) constituted the law which determined the rights of all concerned. The next article following this (102) which is L. 20, T. 7, Lib. 4, referring to, and evidently intended to comprehend all the different modes and agencies for establishing and settling new towns which had been provided for in any of the preceding articles of the ordinance, ordains as follows:—

"*Asiento* for a new poblacion having been taken by way of *colony adelantamiento*, *alcaldia mayor*, *corregimiento*, *villa*, or *lugar*, let not the council, or those who

may have contracted (que hubieren ajustado) in the Indies, not content themselves with having taken and made the *asiento*, but go on controlling it, and ordain that it be carried into execution and take account of what is being done."

§ 80. It is evident from the examinations which have been made that l. 6, 7 and 10, T. 5, lib. 4, R. I. (see ante §62 and 63-4) relate to the settlement of provinces or districts wholly desert and remote from those which had been already peopled, in which settlements could only be effected at that early period by enlisting private enterprise and private capital in these adventures, with the offer of advantages and rewards corresponding to the danger, expense and privations attending them. It is equally evident that these laws like many others relating to new settlements prescribe merely the bases which were to be incorporated in the contracts to be entered into with the government, and they can have no operation independently of the *capitulacion asiento* or express contract. If the last proposition be true, another as a consequence seems to me to result, namely, that these rules prescribing the matter and formalities of contracts to be made or declined by the government at its option, ceased to have any operation in Mexico when the authority of the government which prescribed them terminated; for they are not properly speaking laws which operated *per se* or which had taken effect except where they had entered into contracts already made. They were rules of action for the *Government* only, authorising it to make contracts which should comprehend them. It may be doubted whether after the Federal Government was established in Mexico, it could alienate the smallest portion of the national territory or other national property either in favor of individuals or corporations, except by virtue of the colonization law of 1824, or some other act of Congress. The prohibition is certainly contained in the Constitution of 1836 (4th Const. Law, Art. 18,) and in that of 1843, (Art. 89,) [see also note to l. 8, T. 21, lib. 7, N. R. in *los Codigos Españoles* V. 8. p. 502.] I shall not pursue this point however, as it is not necessary to my purpose. On some future occasion I may ask the permission of the Board to present some authorities upon it, which seem to me to be decisive. *In the absence of an express contract duly concluded in public form, these laws have no application, and when there is such a contract, the terms of it govern every thing.* Who is the Contractor? Who were the *Casados* that agreed among themselves to build up the new town [*hacer la nueva poblacion?*] In what city? before what Escribano Publico? and with what functionary duly empowered, was the contract executed? How many *Casados*, or how many *vecinos* were first stipulated for, and how many actually went to work on the new town? for the *termino y territorio* was to be in *proportion* to the number, in the proportion of four square leagues to thirty. Was it to be a city, *villa* or *lugar?* Within what time was the thing to be done, and was it completed according to contract? If it was peformed where is the report to the Government, and where is the *express grant* specifying the quantity or extent, shape, location and boundaries of the *termino y territerio* that was to be given? It could only be located either by the descriptive terms of the contract, or of the grant following its fulfilment, for the quantity was indefinite, depending upon the number of settlers, and the form of the tract, and its locality would depend on the topographical circumstances of the country. These questions being answered, we may ask again, where are the lands of the town, the *propios*, or property of the *Consejo?* Where are the *solares*, the Ejido, and the *dehesa*, confining with the Ejido? Where the *Suertes* of land equal in number to the solares? And where is the tract to be reserved as the exclusive property of the contractor or contractors? (vid. l. 6, 7, 9, 10, T. 5 and L. 7, 11, 13 and 14, T. 7, lib. 4. R. I.) The *town* had nothing but the *propios* which must be segregated from the rest by metes and bounds. The solares, and *suertes* not given to the first settlers, remained *valdios* for the king, the sovereign, to dispose of to new comers or otherwise according to his pleasure [L. 11 and 14, T. 7, lib. 4.] The Ejido remained the property of the Sovereign also, being nothing else but vacant space left, provisionally outside of the surveyed plat, which might subsequently be sub-divided in the same form as the original plat, by extending the streets, and laying out of new *solares*, if the increase of population should require it [l. 1, 13, 14, T. 7, lib. 4, R. I.] Again where are the private lands of the first setters, the *solares*, the tillable and pasture lands, the *suertes* or *peonias* and *caballerias* that were to be given them, with their locality and boundaries? So far as

the *laws* operate, they establish the claim to these as far as they do the claim of the town to any particular tract under the name of *propios*, or any other denomination, [L. 9, T. 5, and L. 7, 11 and 14, T. 7, lib. 4.] If the settlers themselves should present themselves before the Board proving themselves to have been first settlers and nothing more—producing no express grant, would you find enough in these laws to establish a grant to each one for the portions of land claimed by him, and to determine the locality and boundaries of each portion? Would you have no occasion to refer to contracts, written titles, documents, public records or surveys? *

§ 81. While the learned counsel for the claimant are preparing to surmount these formidable difficulties, we will propose another for their consideration. *Sea Ports are expressly excepted out of the operation of the laws which we are discussing.* In article 92 of the ordinance, placed in juxta position with them, which is l. 6, T. 7, lib. 4, R. I., it is declared "*Territorio y Termino* for a new town, [*poblacion,*] can neither be granted nor taken by *asiento* in Sea Ports, nor in any parts which at any time can result to the prejudice of our royal crown, or that of the state [*republica*] for our will is that they remain reserved for us." *Territorio y Termino*—It is the identical expression used in each and all of the three laws which have so erroneously been supposed to give some support to the pretensions of the present claimant [l. 6, 7, and 10, T. 5, lib. 4]. "Let there be given him four leagues of *termino y territorio*" [l. 6]; "let there be granted him the *termino y territorio* in proportion" [l. 7]; "let there be given them [the *casados*] *termino y territorio* in proportion" [l. 10.] But in Sea Ports *Territorio y termino* can neither be granted, nor taken by *asiento*, for these places must remain reserved for us.

On the 17th of September, 1776, solemn possession was taken of the Presidio newly founded at the entrance of this Port, and on the 9th of October following, the mission was founded with the usual ceremonies, on the site which it yet occupies under the patronage of San Francisco (*Junipero* 210, 214).† The port was

* The lands within the *ternino y territorio* of four leagues which was to be assigned as limits were to be distributed in the manner specified in the laws already referred to and were not by any means to be given to the town, but was to be divided out and granted in distinct portions to the contractor, the settlers, the town, &c., and the lots and suertes not distributed to the first settlers were to be considered as the King's property, "for him to grant to those who should afterwards come to settle, or whatsoever his pleasure should be, (L. 11, T. 7, Lib. 4, R. I. Art. 4 and 5, royal regulation for California of 24 Oct. 1781. See also the Pitic Document dated Nov. 14, 1789, on file especially Art. 18, in which it will be seen that all the grants of lands and lots within the *termino* of four leagues to be assigned to that new town were to be made by the Royal Commissioner in his Majesty's name, and that no authority was to be given to the Ayuntamiento over any lands within the same *termino*, except the eight *suertes*, which by Art. 14 and 15 of the same document are to be assigned, marked out and designated with monuments for *propios*, or property of the town. The citizens were to enjoy in common the pasturage, wood, water, &c. on the vacant portions of the *termino*, as prescribed in L. 5, T. 17, Lib. 4, R. I. (vid ante §38) which is referred to in Art. 5 of this Doc. as the only foundation of, and defining the extent of the interest which the citizens would have in the natural productions of this *termino* of 4 leagues. See also the communication of the *Comandante* D. Jacobo Ugarte y Loyola, dated 21 June, 1786, on file, which in giving the reason why the *estancias* for cattle, ought not to be located within the 4 leagues which may have been assigned and marked out to a town, refers to the same L. 5, and those following of Tit. 17, Lib. 4, R. I. and the royal regulation of 1781, without intimating that the town would have any property in the lands embraced in said *termino*, but only that the citizens would enjoy the common pasturage, fuel, water, &c., as provided in the general laws of the Kingdom referred to.)

† This is the Mission founded for the Patron of the Order in Upper California. It was not included in the number of those originally projected, and the circumstances under which it was established were somewhat curious, as may be seen from the following account of Palore in his *Historical Relation of the Life and Apostolic labors of the Venerable Father Fray Junipero Serra:*

"The 24 day of January, 1770, returned to San Diego the land expedition which had started out on the 14 July of the year before, having spent six months and ten days and suffered many hardships (as my beloved Father and fellow disciple Fr. Juan Crespi relates in his diary), bringing the unwelcome intelligence of their failure to find the Port of Monterey, in which had been anchored the Maritime Expedition of Admiral Sebastian Vizcaino, in the year 1603, in the time that the Count of Monterey was Vice-roy of New Spain, and that they had arrived at the Port of our Father San Francisco, forty leagues further to the North.

"Father Fr. Juan Crespi who went with the Expedition wrote me this information, adding that they suspected that the Port had been stopped up as they found some large banks or ridges of sand. As soon as I read this, I attributed it to the Divine interposition, that the Expedition not finding the Port of Monterey in the place indicated on the old charts, should proceed onward till arriving at the Port of our Father San Francisco, for the reason which I am now going to state.

"When the Venerable Father Fr. Junipero treated with the Most Excellent Señor Visitor General (Galvez) respecting the three first Missions which the latter had given him in charge to found in this New California, seeing the names and Patrons assigned to them, he said, 'and is there to be no Mission, sir, for our Father San Francisco?' to which it was replied, 'If San Francisco

at that time more thoroughly explored than it had been previously; but for a long time previous to this, it had been known to the Spanish Government as one the most magnificent seaports in the world, and was doubtless looked upon as probably destined to become the grand emporium of that new commerce, which the sublime genius of Alveroni aimed to establish with the Asiatic nations, in which project he was defeated by the conspiracy of France and England at the court of his master.

§ 82. Seaports might be settled, towns might be built up in them, so far as might be convenient for the accommodation of the interior and exterior commerce, for which purpose it was only required that the sovereign proprietor of the land, or some one by him authorized, should grant building lots to those wishing to settle and establish themselves there. But the three laws which have already occupied too much of our attention, speak of the *termino y territorio* to be granted to the original founders, subject to distribution in the manner specified. *This could not be granted in seaports. They are excepted from the operation of those laws. They are reserved to the Sovereign.* I may suggest here the doubt whether under the laws of Mexico, any lands whatever can be given to towns or individuals, within ten leagues of the seacoast, without the previous approval of the supreme government of the Mexican Republic. I say to towns or individuals, for *so far as California is concerned, no power but Congress itself could give lands to towns or other corporations*, on which point I propose to speak more particularly in another place.

The Governor of California in his message to the Departmental *Junta* of 16th of Feb. 1840 (Doc. "D." filed in this case) expressly says that all the grants of land within ten leagues of the seacoast are illegal—*illegal*, that is the expression, and that no application had been made to the supreme government to *legalize* them. So says Capt. Halleek in his report which will be found 1 Roekwell p. 436. In Sinaloa, there was an act of the Legislature passed while it was a Sovereign State, authorizing the designation of *ejidos* to towns, which law remained in force after the establishment of the Central Government in 1836 (see ante § 5). The Governor of that Department, by a decree of July 8th, 1842 (2 Observador Judicial 265), established a regulation for the execution of that law, and in Art. 14 thereof it is declared,

"In the ten litoral leagues which the General Government reserved to itself by articles 4 and 5 of the law of Aug. 18, 1824, lands cannot be given in property to any *Pueblo*, corporation, nor private person."

§ 83. I shall not occupy the time of the Board with a detailed examination of Tit. 11, of the regulation for Presidios of Sept. 10, 1772 (Recopilacion of Arrillaga for 1834, p. 159), the document published by Rockwell (p. 451), purporting to be instructions from the Commandante-Geueral of the interior provinces, of March 22, 1791; instructions from the viceroy, of Aug. 17, 1773 (Rockwell 444), nor the laws of Sept. 13, 1813, Aug. 17, and Nov. 26, 1833, and April 16, 1834, respecting the secularization of missions; nor the document on file, dated Chihuahua, Nov. 14, 1789, purporting to be "Instruetion approved by His Majesty,

wishes to have a Mission, let him show you his Port, and it shall be founded for him.' The Expedition ascended. It arrived at the Port of Monterey: it tarried and planted a cross there without any one recognizing it among all that went, knowing only what they had read of it in history; they proceed forty leagues further up; they fall in with the Port of San Francisco, and all recognize it immediately, by the application of all the descriptions which they had of it. In view of this what could we say, but that our Sainted Father wished to have a Mission at his Port?

"Thus judged the Most Excellent Visitor General, for as soon as he received the information, (His Excellency being still in Mexico,) he obtained orders from the Vice-roy that the Mission should be founded at said Port," (Chap. 18.) This was done in the year 1776, of which the author gives an account in Chap 45:

"Having concluded the survey, the launch returned to the Port, and both Commandants communicated with each other the information obtained, and what they had seen and observed in order to report to his Excellency (the Vice-roy,) and considering that it was now time for the Paquet boat to return to San Blas, seeing that the order of the Commandant Rivera for the establishment of the Mission of our Father San Francisco came not, they resolved to proceed to take possession and make a beginning for it, as was actually done on the 9th day of October.

"After having blessed the site (*sitio*) and reared the holy cross, and made a procession with the image of our Father San Francisco, which was afterwards placed upon an altar, I sang the first mass, and preached of our Sainted Father as Patron of the Mission; at which foundation the people (*gente*) of the Presidio, the Barque, and the Mission assisted, firing their salutes during the progress of all the ceremonies." (See also Forbes' California, p. 93, 127–8.)

which was formed for the establishment of the new *villa* of Pitic in the province of Sonora, ordered (it is said in the title, but not shown any where in the document) to be adapted to the other new *poblaciones* projected and which may be established in the district of this *Comandancia*," nor the document dated 21st June, 1786 purporting to be opinion of the *asesor* of the *Comandancia* of the Interior Provinces (among which California was never included, but to the superior government of which it was subject from 1776 to 1788 only; see "Republica Mexicana in 1846," by Rodriguez, p. 7 and 8; 4 *Legislacion Ultramarina* 283–4, Junipero p. 229) on various subjects respecting the granting of lands to individuals, and the designation of the *termino* or limits of four leagues to new settlements so that within it the citizens may enjoy in common the pasturage, wood, waters and other natural productions as provided in L. 5, and those following it, Tit. 17, Lib. 4, R. I. (See ante § 38) to which he refers, as well as to the 8 and 9 arts., Tit. 14, of the regulation of 24th Oct. 1781."

No general regulation for Presidios settlements &c., for the interior provinces had any application to California after its own peculiar regulation of 24th Oct., 1781 was approved by the King. But this matters nothing; any argument, claim or right, that could be founded on these and similar Documents is fully answered in my remarks upon the laws to which they refer. The Pitic Document, the opinion of the *Asesor*, the order 1791 do not purport to be laws, nor could they possibly have the force of such if they did, but executive orders the operation of which so far as they had not actually been executed, ceased with the authority which had issued them. But if they had not ceased, if they had not only been applicable, but continued in force to this day, thay afford no assistance to the claimant because so far as San Francisco is concerned, they were never acted on. There was no town founded here. There was no measurment and designation by permanent monuments of the *termino* [limits] of four leagues therein spoken of—no asignment, measurement and designation in the same manner of the eight *suertes* of land which were to be granted to the town for its *propios*. But supposing that they had all been specially applicable to California and had continued to preserve all the force they ever had till this day, and could *now* be executed as fully and effectually as ever. This does not help the claimant, for so far as they relate to the *termino* of four leagues, they are wholly based upon and refer to the laws of the Indies [L. 6, 7, and 10, T. 7, Lib. 4,] which I have before discussed, and from the operation of which laws, as we have before seen, sea ports are expressly excluded by one of the articles immediately following in the very same statute. But allowing all I have here said to be of no weight, and that each and all the said orders, opinions, &c., had referred to this identical locality and been carried into full effect it would not help the present claimant except so far as respects the *suertes* of lands which were to be assigned to the town for *propios*, [See Pitic Doc. art. 14 and 15, Reg. of 1781, Tit. 14, art. 4 and 5, and the laws of the Indies cited ante § 38.]

The instruction for Pitic expressly directs that all the lands and lots within the *termino* of four leagues, distributed to settlers shall be given them by the Royal Commissioner in the King's name, (see the Doc., especially article 18,) in size and number according to his discretion, and gives to the Ayuntamiento and municipal functionaries no control whatever over any lands but the *propios*, and does not propose to give the town or its citizens any interest whatever in any other *lands* embraced within the said *termino*, or limits, of four leagues, nor does it propose to give the citizens any interest in the natural productions, but what is given by the general laws of the kingdom to which express reference is made as the *only* authority for the action proposed to be taken. This, with what is said by Elizondo, and by Viscaino Perez respecting the *termino* which may be assigned to towns (ante § 40, 52,) and the preceding part of my remarks and references, will be sufficient to dispose of this, and other similar documents. These observations will be found entirely applicable to the "opinion of the asesor," before referred to. It is an opinion founded upon various laws and royal regulations, which it particularly refers to, and which, when the paper is carefully read, will be found to have been already fully explained in my argument. As to what functionaries had authority to distribute royal lands and lots to private persons at different periods—whether the Commandants of the *Presidios* had it, and if so,

how they received the authority, and within what territorial limits they were restricted in its exercise, and for what reasons, and whether because they *might* have granted lands and lots, any individual could sustain a claim for lands or lots which in fact were *not* granted to him, are questions not necessary to consider here.

§ 84. Have towns then no property by virtue of their establishment, in Mexico and other Spanish countries—none but what they acquire by the same modes as natural persons? I answer, none whatever. It was contemplated by the colonization laws of *Spain*, and let it be admitted that it is contemplated by the colonization laws of Mexico, that lands for certain purposes shall be given to towns, and it is clearly likewise contemplated by the said laws that lands shall be given to individuals. But in many, perhaps the majority of cases, both the one and the other are found destitute, because they did not get the grant from government, or because they had not means to buy them, or, perhaps because they did not want them. How then do towns grow up in Spanish countries? I answer in the same manner as in the United States, by the union and the concentration of the population at some particular point, the establishment and natural increase of trade, commerce, manufactures. The citizens who want dwelling-houses, stores, or shops, build them or buy them from the lawful owner. Those who want lots to build on, purchase or receive them by gift from the proprietor, whether he be the sovereign or some private person, and the property is not changed in any manner by the formation of the town, or its erection into a corporation. *There is no Spanish or Mexican law or authority that ever has been, or ever can be adduced in refutation of this proposition.*

§ 85. By law 4, T. 12, Lib. 4, R. I. of 1568, (five years after the promulgation of the *Ordinanzas de Poblaciones* be it noted) to supply a defect it would seem in the ordinance of 1563, which relates exclusively to the establishment of towns by contract, it is provided that—

"If in the parts of the Indies already discovered, there be some sites (*sitios*) and districts (*comarcas*) so good that it may be expedient to found towns (*poblaciones*) and any persons should apply to establish themselves, and take up their residence therein, in order that they may do it the more willingly, and with greater advantage let the *viceroys* and *Presidents* give *them in our name*, lands *solares* and *waters*, according to the situation of the land, provided it be not in prejudice of third persons, and be during our pleasure."

Compare this now with L. 5, 6, 7 and 8, of the same title, and L. 11 and 14, T. 7, and article 4 and 5 of title 14 of the regulation of 24th Oct. 1781 (Arrellaga Recop. 1828, p. 162) and no doubt whatever can remain that the king was deemed the absolute owner of all lands, and lots in towns which had not been expressly granted.

The said law, 5 Tit. 12 of 1532 provides that when distribution is to be made of lands, waters, watering places, and pasturage among those who go to settle (*poblar*) the *vice-roys* or *Governors* who have authority from us, shall make the distribution (*repartimiento*) with the *parecer* (opinion or advice) of the *Cabildos* (council or Ayuntamiento) of the cities or *villas*, (i. e. within whose termino the lands are) taking care that the *Regidores* be preferred, if they have not equivalent lands and *solares;* L. 6 (1534) that at the distribution (*repartimiento*) of the *vecindades* [lands given to residents] *Caballerias* and *peonias* of lands which may be given to the *vecinos*, the Procurador of the city or *villa* in which this is to be done be present; L. 7 [1588] that the distribution [repartimiento] of lands as well in new towns [poblaciones] as in places and *terminos* which may be already *poblados* [where towns may be already established] be made with impartiality and without respect to persons.

L. 8, [1563] provides "That if there be presented a petition soliciting *solares* or *lands in a city or villa*, where our *audiencia* resides, the same shall be first presented in the *cabildo*, and being there conferred upon, two *regidores* shall be deputed who shall make known to the viceroy or president, the opinion of the *cabildo* [*lo que al cabildo pareciere*] and being considered by the *vice-roy* or *president*, and deputies, let the *despacho be given signed by all*, in the presence of the *Escribano* of the *Cabildo, in order that he may record it in the book of the Cabildo*; and if the petition shall be for the distribution [*repatiniento*] of waters and lands

for machinery or mills [*ingenios,*] let it be presented before the Viceroy or President, and let him remit it to the *Cabildo,* who likewise having conferred upon it, shall send by a *regidor* to declare their opinion [*parecer*] in order that being considered (*visto*) *by the Viceroy or President he may decree* (*provea*) *as may be proper* (*lo que convenga.*)

§ 86. It ought to be constantly borne in mind that in all Spanish countries, the local authority is the *Municipal* whose *informe* should be taken on all affairs of the Government relating to its demarkation, and especially in the distribution of lands to citizens, which is to be done with impartiality, and with a knowledge of the particular claims, and merits of each one as well as of the actual condition of the lands solicited, all which information the local authority alone can communicate.

But in all cases the grants are to be *made* by the Viceroys, Presidents or Governors who may have royal authority therefor, after taking the opinion or *informe* of the respective municipal authorities in the same manner, as by the regulation of 21 Nov., 1828, [Art. 3,] the Governor may, and in many cases ought indispensibly to take the *informe* or *parecer* of the respective municipal authority.

§ 87. The said royal regulation of 24 Oct., 1781, made especially for California [articles 4 and 5,] provides that [Art. 4] "the *solares* which may be granted to new *pobladores* must be assigned by the Government in the sites [*sitios*] and with the extension corresponding to that of the land where the new *Pueblos* may be established, in such mode that there may remain formed streets and a *Plaza,* conformably with what is provided by the laws of the Kingdom [this was only a regulation and instruction] and regulated thereby [*con su arreglo*] there shall be assigned *ejido* sufficient for the *Pueblo* and *dehesa* with the tillable lands suitable for *propios.*"

Art. 5. "Each *suerte* of land as well irrigable as de *temporal,* must be two hundred varas long and two hundred wide, this being the extent which is usually occupied by one *fanega* of Indian corn in sowing. The distribution which of the said *suertes,* as well as of the *solares, must be made in the name of the King our Lord,* shall be executed by the government, with equality and in proportion to the extent of land which has the advantage of irrigation, in such manner that having previously made the proper demarkation, and reserving *valdias,* the fourth part of the number which results, compared with the number of the *Pobladores* if there should be so many [that is, as to take three-fourths] two *suertes* of irrigable, and two of dry land, will be assigned to each, and of the king's *suertes* [*realengas*] will be set apart, such as may appear suitable for *propios* of the *Pueblo,* and of the rest [of the *suertes*] [*las restantes*] *grants shall be made by the Governor in the name of his Majesty,* to those who newly [*de nuevo*] come to settle, *as likewise of the respective solares,* and especially to soldiers who having completed the time of their enlistment, or their advanced age, may retire from the service, as well as to the families of those who may have deceased."

§ 88. Here is a commentary upon the laws of the Indies and the Sovereign's proprietary right to the lands in towns, so clear and explicit in itself that I am saved the necessity of any explanation. But I have two others not less clear and explicit, the one by *D. Pedro Fages,* Governor of the Californias, and the Commissioner José Moraga, Lieutenant *Comandante* of the Presidio of San Francisco, and the other of less recent date by the King and royal council of the Indies; which as they prove themselves, so far as concerns my present purpose, I have adopted as part of my argument.

The following statement from one who was an eye-witness to what he relates, will serve as an appropriate introduction to the first:

"In order to give sustenance and stability to this spiritual conquest, the most Excellent Señor Viceroy, gave in charge to the new Governor *D. Felipe Neve,* that he should procure to settle [*poblar*] the country with some *Pueblos* of Spanish people, who should occupy themselves in the cultivation of the lands, and the rearing of cattle and beasts, [horses and mules,] which might serve for the maintenance of these acquisitions. And the said Señor keeping in mind this superior order, having observed when he came in sight of the royal Presidio of this Port, [of San Francisco] the extensive plains in which the Mission of Santa Clara is situated, the great extent of land which might be irrigated with the

abundant waters of the river named our Lady of *Guadalupe*, he assembled the *pobladores* who had come with the expedition from Sonora and adding to them others, he assigned to them a site [*sitio*] and distributed lands for the formation of a *Pueblo* entitled of *San Joseph de Guadalupe*, designating for the location [*abicacion*] thereof the place above the Mission of Santa Clara, on the other side of the river named *Guadalupe* towards its rise, three quarters of a league distant from the houses of the Mission. In the said site [*sitio*] the colonists [*colonos*] formed their *Pueblo* giving a beginning thereto in the first days of November 1777, to the which, other *vecinos* have been added, and all governed by an *Alcalde* of the same *vecinos*, subordinate to the Governor of the Province, with a guard of three soldiers, and one Corporal, all resorting to the Mission to hear Mass. They maintain themselves with the crops which they gather of wheat, beans and Indian-corn, and with the surplus which they sell to the troops they clothe themselves, for the same purpose rearing large and small cattle and mares, in order to supply the troops with horses.'" [*Palou* Life and Apostolic labors of Father Junipero, p. 225.]

§ 89. Here you have a *Pueblo* fairly established by the Governor, in person, acting under orders of the Viceroy, who had to the same effect received his instructions from the king [vid same author, p. 63.] All that remained now to be done so far as regarded the *establishment* of the *Pueblo*, was to make immediate report to the king according to L. 4, T. 1, Lib. 4, R. I. Yet this *Pueblo* thus fairly established with its Municipal Government installed, had no lands, nor anything it could call its own, but the immortal honor of being the Pioneer town in the most magnificent country in the Universe. Five years afterwards the initiatory steps were taken in conformity with L. 1, T. 13, and L. 1, 13 and 14, T. 7, Lib. 4, R. I., and the royal instruction of 1781 in the designation of lands for *propios* and *Ejido*, as well as for giving to the settlers formal titles for their respective allotments. It was done in this form:

"Don Pedro Fages, Lieutenant Colonel of the royal army, and Governor of Old and New California, &c.

"Inasmuch as in Title 14 of the royal regulation which governs in this Peninsula, is provided the mode of distributing *solares* and *suertes* of land with all else relating to cultivation, and rearing of cattle, and the establishment and advancement (*fomento*) of *Pueblos* of civilized people, (*Gente de razon,*) which may be located in the territories adjacent to the *Presidios* of these new establishments, and it being convenient to practice the formalities requisite in giving possession to the citizens of San José de Guadalupe, in order that they may subsist in peace and quietude:—

"Therefore I commission D. José Moraga, Lieutenant *Comandante* of the Presidio of San Francisco to proceed to the said Pueblo, and conformably with the instructions contained in the aforesaid royal regulation, give possession in the name of his Majesty, (whom God preserve) to each one of the settlers of the *suertes* and *solares*, which are destined for them, proceeding by formal acts (*autos*) and in continuation of this mandate, forming for each one of the parties interested, a *despacho* with insertion of a copy of this *Expediente*, and of the proceedings relating to each, he will remit the same for confirmation, in order that this government in view thereof, determine as may seem convenient; enjoining that it must appear (in said *Expediente*) that the citizens are made aware of what is *realengo*, and what is of the common (*comun*) as are the *Ejidos*, watering places, fuel, &c.; that it must be expressed in each dispatch and proceeding giving possession, that it is received and admitted subject to the conditions and penalties, which the said instruction imposes, as well as the privileges, favors and exceptions with which the sovereign makes the grant, and all must sign or some other by their request with the commissioner himself and witnesses; and lastly that in the principal book of records an entry shall be made of their possessions as well as of the branding irons, [for marking their cattle] which are to be given to them of all which a certified transcript [*testimonio*] is to be obtained and archived in the said Presidio of San Francisco.

Monterey, Oct. 24th, 1782.

PEDRO FAGES.

"In the *Pueblo* of San José Guadalupe, on the thirteenth day of the month of May, of the year one thousand seven hundred and eighty-three, I, D. José Moraga, Lieutenant Comandante of the royal Presidio of San Francisco, in pursuance of the mandate which precedes, must proceed to its punctual fulfillment, and as the said instruction in articles 4 and 5 declares," &c. [here is inserted verbatim the 4th and 5th articles, Tit. 14 of the regulation of 24th Oct., 1781]; "being fully aware of all which, it is my duty to command and I do hereby command, that when the proceedings shall be concluded with the execution of whatever may be justly required, the originals be remitted to the Governor for his approbation, or the purposes which to him may seem meet, and that a copy remain in the archives under my charge. Thus I have ordained, decreed and signed, which I authenticate.

JOSE MORAGA.

"In the same *Pueblo*, day, month and year above expressed, I, the said Lieutenant Commissioner for the possession and *repartimiento* of *solares* and *suertes* of land to the settlers of the *Pueblo* of San José de Guadalupe, in view of the act which precedes, it being indispensible in order to execute it, to appoint assisting witnesses during the progress of the proceedings, do name for that purpose the soldiers Felipe Tapia, and Juan José Peralta, whom I made aware of the contents of this appointment, in order that in view of the circumstances corresponding, they might obligate themselves to give their assistance in the respective acts. Thus I have decreed, ordered and signed, which I authenticate.

JOSE MORAGA.

In the said *Pueblo*, day, month and year aforesaid, I, the said Lieutenant Commissioner, by virtue of the preceding appointment having in my presence Felipe Tapia and Juan José Peralta, soldiers of the company of the royal Presidio of San Francisco, made known to them the preceding decree, the which having heard, they said that they accepted the said appointment, and promised their assistance in these proceedings, with the punctuality which I exact of them, and to which they are obliged, and they signed with me which I authenticate.

JOSE MORAGA,
FELIPE TAPIA,
JUAN JOSE PERALTA.

In the said *Pueblo* on the 14th day of May, in the year one thousand seven hundred and eighty-three, I, the said Lieutenant Commissioner, in continuation of these proceedings in duty ought to, and do command to appear before me, and the witnesses of my assistance, the nine *Pobladores* [settlers] of the said *Pueblo*, and having all present, in the name of his Majesty, [whom God preserve], I gave possession of the respective *solar* thirty varas square for a dwelling house, to the *Alcalde* and settler Ignacio Archuleta, who was made acquainted therewith, and he said that he was aware of the privileges, favors and exceptions with which the sovereign made him this concession under the penalties imposed on the disobedient; and being interrogated if he admitted the possession given, replied that he did, and offered to fulfil the obligations contracted in his establishment [here follows the discription of the lot]; not knowing how to sign, Tiburcio Basquez did it at his request; I did the same with the assisting witnesses.

JOSE MORAGA,
FELIPE TAPIA,
JUAN JOSE PERALTA,
TIBURCIO BASQUEZ.

And immediately in the said *Pueblo*, day, month and year, I proceeded with those in my assistance, and the settlers to the arrable lands, and the measurement having been first made, two hundred varas in length and two hundred in breadth, of each *suerte*, I gave possession to the said Alcalde Ignacio Archuleta of the four *suertes* of land to which he is entitled, all irrigable, there not being sufficient of the description provided for in the said instructions for *Pueblos* of civilized people, [*gente de razon*], [here is the description which is omitted]; the posses-

sion being given with the same formalities and requisites expressed in the foregoing proceeding relating to the *solar* of the said Ignacio Archuleta, who not knowing how to sign, Jose Tiburcio Basquez did it at his request, and I did the same with those of my assistance.

JOSE MORAGA,
JOSE TIBURCIO BASQUEZ,
FELIPE TAPIA,
JUAN JOSE PERALTA.

(The next act is that of delivering the branding irons for marking cattle. The formalities practiced in giving possession to the other settlers, are precisely the same, after which follows the designation of *Ejido*, and seting apart *suertes* of land for *propios* of the *Pueblo*.)

In the Pueblo of San José de Guadalupe on the 19th day of May, of the year one thousand seven hundred and eighty-three, I, D. José Moraga, Lieutenant *Comandante* and Commissioner for the execution of these proceedings, in duty ought to, and do order, the acts of giving possession of the *solares* and *suertes* of land to which each settler of the said *Pueblo* is entitled, being concluded, that I do proceed with them to the lands of the part to the —— of this *Pueblo*, and its river, and the measurement having been made from the —— and river below, unto the boundary which divides the lands of the said *Pueblo* from those of the Mission of Santa Clara, from such measurement there result 1958 varas to the said boundary. Of this quantity the half is designated for *propios* of the *Pueblo*, and the remainder *is to be considered royal land* [*realengo*], *with all the rest of the land which is not comprehended in the portions of which possession has been given to the settlers*, and for *Ejidos* of the said Pueblo, there is designated all the —— fifteen hundred varas in length and seven hundred in breadth, with all of which I made them fully acquainted, and they unanimously said that they understood as well what belonged to their respective possessions, as what was *propios* of the *Pueblo*, and what royal land, (*realengo*) with all else which has been made known to them, and not knowing how to sign, Jose Tiburcio Basquez did it at the request of all; I did the same with the present witnesses, which I authenticate.

JOSE MORAGA,
JOSE TIBURCIO BASQUEZ,
FELIPE TAPIA,
JUAN JOSE PERALTA.

MONTEREY, Dec. 31st, 1783.

I approve all that has been done in these proceedings, and the originals will be delivered to the settler —— in order that they may serve him as a title and the ends convenient.

PEDRO FAGES.

Thus with the exception of the *propios* which would be the private property of the municipality, provided the king confirmed it (see L. 1, T. 13, Lib. 4, R. I.) all the lands in the *Pueblo* of San José of which possession had not been given to individuals, remained the property of the sovereign, a conclusion which it seems common sense would dictate.

§ 90. I have another commentary of somewhat modern date on the laws of Spain and the Indies which I have cited to show that the landed property of the sovereign is not changed or in any manner qualified or restricted by any territorial demarkations whatever. The city of Havana in the Island of Cuba, was founded in the year 1515. In its municipal ordinances formed by the kings command, and approved May 27th, 1640, authority was given to the Ayuntamiento [see articles 63 to 72] to grant building lots as well as lands outside of the population for keeping cattle &c. [Legislacion Ultramarina V. 3, p. 410.] They exercised this authority for above a century, but their grants or concessions did not convey the property, according to the opinion of the *Fiscal* of the Royal *Hacienda* expressed in an *informe* dated Oct. 6th, 1797, [ib. V. 6, p. 49 § 9] because, he says "in those which I have seen I do not find that the grants were made in the Royal name of his Majesty, and as the whole soil of the Island pertains to the

royal patrimony, the said *Cabildos* (*Ayuntamientos*) could not grant in any other mode, nor even in this without special authority from the Sovereign."

By a royal *cedula* of Nov. 23, 1729, they were prohibited from exercising this authority any longer, which as it lays down the law very clearly, I shall read in English in continuation of my argument:

"THE KING.—Council, judiciary, and government of San Cristobal of Havana. By a dispatch of this day I have thought proper to confirm and approve the sale which Jose Rodsiguez made on the 27th March, 1721, before Miguel Hernandez Altuno, Notary Public of that city, to D. Antonio de la Luz, resident of the same, of some houses and lots [*solares*] which belonged to him in the place [*sitio*] called *Molinillo*, granted by you in the year 1699, to D. Pedro Garabuni and D. Jose Manuel Aleman, and tranferred by the said Jose Rodriguez; and considering that you have no authority to concede *mercedes*, lands, and *solares* and effectuate the sales and transfer thereof, as you did in case of those of the said Jose Rodriguez, and that it belongs and appertains to me exclusively to dispense such favors (*gracias*) and concessions and in my royal name to the sub-delegates who are appointed in that city to the commission for the composition of lands which (*appointment*) I have given to D. Diego de Zuñiga, minister of my council by a dispatch of the 5th Dec., 1720, it has appeared meet to ordain and command as I do, that henceforth you do abstain from granting *merced*, lands, and *solares* of that jurisdiction, which authority can alone be exercised by the said sub-delegates of the aforesaid commission for composition of lands, and recovery of forfeitures in virtue of the authority which they may have received from the exclusive judge in this matter. Thus is my will "Dated in Saville, 23d Nov., 1729." (Biblioteca de Legislacion Ultramarina V. 6, p. 43.)

§ 91. The *Ayuntamiento* did not pretend to have any right to four leagues, or any other quantity whatever of vacant lands within their jurisdiction, but represented to the king that it would be *convenient* that the authority for making grants and distribution of lands and *solares* should be continued to them which gave occasion for another royal *cedula* dated the 16th Feb., 1739. This after reciting that the subject had been maturely considered in the council of the Indies, commands that the municipal government observe strictly what had before been enjoined, and thenceforth abstain from exercising the authority that had been delegated to it in the municipal ordinances (articles above cited) with respect to making grants and distribution *of lands and lots within its jurisdiction*, reiterating what is said in the former *cedula*, that the authority to do this resides exclusively in the sub-delegates of the royal *Hacienda* (ib. p. 44.)

In 1823 a rapid increase of the population having taken place and consequent advancement in the value of lands outside the walls, it became an object not only to put the vacant and unclaimed lots in market, but to investigate the right of those who had usurped the possession of some of them without just titles. They were accordingly disposed of (those that were vacant) on account of the royal treasury, the municipal government having no intervention in the business, and interposing no claim to the lands, and those who were occupying without sufficient titles resorted, not to the municipal government, but to the superintendent sub-delegate of the royal Treasury, to procure a confirmation by way of composition (ib. V. 3, p. 313—14.)

§ 92. That towns, by virtue of their establishment and demarkation of *terminos*, (limitary territory,) become the owners of the lands embraced within such limits, or that they thus become the owners of four leagues square, four square leagues, or any other specific quantity of land or other property, is an idea that does not seem to have had its origin in Spanish countries. Any traces of such a doctrine will be sought in vain among the statutes, customs or opinions of commentators in those countries. The *lex scripta* saith it is not in me, and the *lex non scripta* saith I know it not, go, seek for it in the *lex ignota*.

It did not occur to any body, it seems, when the *Pueblo* of Manzanillo was incorporated, nor to the Governor of Sinoloa when he promulgated the order for assigning *Egidos* to the towns in that department (2 Observador Judicial 265), nor to the King and council of the Indies, or the illustrious *Ayuntamiento* of the city of Havana, when that corporation was absolutely inhibited from granting *any* lots or lands whatsoever within its jurisdiction and the building lots and

other lands were assumed without dispute to be the property of the King, nor was any such right recognized or alluded to, when by a special royal decree the *Ayuntamiento* of the city of Mexico was authorized for the first time to grant building lots (ante § 26,) although that *noblisima* (most noble) and loyal city had then been established and incorporated under the Spanish rule for a period of more than one hundred and seventy-five years. No such right is recognized, nor referred to in the royal regulation of 24th Oct. 1781, Tit. 14, respecting the establishment of towns in California (see ante § 86,) nor in the proceedings giving possession to the *Pobladores* of *San Jose*, and marking out the lands of that town (ante § 89) nor in the decree of the Spanish *Cortes* of 4th Jan. 1813, in which all the lands within the limits of towns, except those of the *propios* are regarded as the property of the nation (ante § 55 to 59;) no such right is recognized in l. 9, T. 21, lib. 7, N. R., and l. 20, T. 12, Lib. 4, R. I., prohibiting the towns to grant *any* lands within their limits; nor in l. 22, T. 12, Lib. 4, R. I., granting *special authority* to the *villa* of *Tolu*, to make distribution to settlers of certain lands within its *Termino* or demarkation; nor in L. 14, T. 7, Lib. 4, R, I., authorizing the viceroys to set apart lands in one town for the *propios* of other towns which may be destitute; nor in the law of the Mexican Congress of April 18, 1828, granting the lands known as *Desierto Viejo* to the *Pueblos*, to which it was contiguous, of the district of *San Angel* for distribution, in the mode specified in that act; nor in L. 1, 4, 5, 6, 7 and 8, T. 12, Lib. 4, R. I. (ante § 85), conferring upon the viceroys and presidents of the audiencias, the exclusive authority to grant and distribute lands and lots *within*, as well as without the limits of towns; nor in the royal instruction of Oct. 15, 1754; nor in the 81st Art. of the *Ordinanza de Intendentes*, of Dec. 4, 1786; nor in any of the laws and regulations of the Mexican Republic on the subject of colonization.

§ 93. On the contrary, the doctrine referred to is repudiated by all the laws, and all the commentators, and the practice of the government in all ages, as well as by common reason itself. The errors which we have committed on this subject have arisen in part, from our not understanding well the agrarian laws of Spain, and not comprehending the peculiarities of the political system of that country, of which the *ayuntamientos*, *consejos*, *cabildos*, *curias*, or *regimientos* of the towns and cities, have always constituted an essential part, having an intervention in every matter of government affecting persons or things within their *terminos* or jurisdiction. But we have also been misled by translators, who, without any knowledge, such as could only be acquired by a thorough acquaintance with the codes and the law writers, of the meaning and application of legal terms, have by a dash of the pen made at random, laid down the law for us in the most abstruse subjects.

§ 94. In order that a town may grow up, it is not necessary, nor has it ever been the practice in Spain or Mexico, nor in any other country that I know anything about, for the government to grant the land on which it is founded to anybody but the settlers individually—to each one the portion which he is permitted to occupy. Why should the government grant the lots intended for private use to the corporation, even after the town comes to be erected into a corporation? These lands are not destined to the use of the corporation, but to private use exclusively, and if the government should grant them to the corporation it could be only with the object that the corporation should regrant them to individuals. Would it not be as well for the government in the first instance to grant the lots directly, through its local agents, to those for whose use they are destined? Such seems to have been the policy of Spain, which has not been changed by any legislation of the Mexican Republic. "Let the *solares* be distributed by lot to first settlers, continuing from those which correspond to the *plaza mayor*, and let the rest remain for *us* to make grant thereof to those who shall afterwards come to settle, or whatsoever our pleasure may be," (L. 11, T. 7, Lib. 4, R. I.). And in the regulation for California, of Oct. 24, 1781, after enjoining upon the governor to distribute in the king's name, one building lot (*solar*) and four *suertes* of land for cultivation to each original settler, it is provided, "and of the rest, grants shall be made by the *Governor in the name of his Majesty*, to those who newly come to settle, as likewise of the respective *solares*" (ante § 87. The same policy was observed in the colonization laws of Mexico, which necessarily comprehend

the formation of towns. These laws make no provision for granting *any* lands to towns, much less do they contemplate the idle ceremony of granting to towns, lands which are intended for the use of individual settlers, in order that the towns may reconvey them for that purpose. Municipal corporations, which, as we have already seen, were under the perpetual tutilage of government, and without its especial license could not alienate anything whatever that belonged to them (ante § 21, 24), were not invested with the property in those lands which were intended to be alienated as fast as they could be settled.

§ 95. The regulation of Nov. 21, 1828, contains the authority for the distribution of lands in towns as well as elsewhere in the territories of the Mexican Republic. It is delegated by the supreme government to the *Gefes Politicos*, and Territorial Deputations, and these have in their turn delegated the power, with such restrictions as they have thought proper to impose to other inferior authorities. It is provided in this regulation, that the land to be granted for a building lot (*solar*) shall be of one hundred varas (Art. 15), that the union of many families into a town (*poblacion*) shall conform (*seguirá*) in its formation, government, and interior police, to the rules established by the laws remaining in force (*vigentes*) for the other towns (*poblaciones*) of the Republic, taking especial care in the new ones that they be built up (*se construyan*) with all possible regularity (Art. 13). That no *contract*, however (*capitluacion*), for founding a new town (*poblacion*) shall be admitted, unless the contractor (*capitulante*) obligate himself to present as *pobladores* (original settlers), at least twelve families (Art. 10). In this regulation, and the 16th section of the colonization law of August 18, 1824, we must look for the authority to grant and distribute lands and lots. The power resides by law in the supreme government of the Republic, and by the regulation referred to, has been delegated to the territorial governments, which have again sub-delegated the same power, under restrictions, to other subordinate authorities.*

§ 96. Subsequent to the regulation of 1828, and after the establishment of the Constitution of 1836, the power to regulate the distribution of lands in town was conferred upon the prefects (Law of March 20, 1837, Art. 77), a provision which was adopted by Congress, from the Constitution of the State of Mexico (Art 155). Governor Alvarado is right when he says, as he does in his deposition, that the power exercised by the municipal authorities in all the towns in California in

* The 16th section of the general Colonization act of the Mexican Congress of 18th Aug. 1824, provides that "the *Government* in conformity with the principles established in this law shall proceed to colonize the Territories of the Republic." It makes no mention of any subordinate functionaries, but provides that the Government, consisting of the President of the Republic, and the Constitutional Ministry shall execute the law. The President, however, by the regulation of 21st Nov. 1828, committed to the Governors and Territorial Deputations, a portion of the authority which the *law* confers on the *Government alone*. If this is a delegation of the power, then it would seem to have been judged, by the Mexican Government at least, that the power so far as regards granting lands and lots to "*contractors, families* and *private persons*," may be delegated. By the first article of the act of Congress of 20th March, 1837, it is provided that—

"The interior Government of the Departments shall be encharged to the Governors, Departmental *Juntas*, Prefects, Sub-Prefects, Ayuntamientos, Alcaldes, and Justices of the Peace." Where does this authority begin, and where must it end? It must begin with the Government, the Supreme Executive, and under the authority, rules and restrictions which may be given and prescribed, be contiually exercised by the constitutional agents and subordinates of the Government, no one having any power to act without direct authorization of his superior.

At one moment it is said by counsel for the claimant, that the Territorial Government could not confer on Ayuntamientos power to grant building lots, and in the next moment, that it *could* confer this power upon them, and a good deal more with it, namely: the property in the lands themselves; that is to say, that the Governor and Deputation have the power by *implication* (for it is not pretended that any express law gives it) to grant to a corporation a tract of land which would embrace a thousand, or a hundred thousand building lots, but would not have the power to authorize the same corporation, or its authorities, to grant *one* lot out of the same tract, to an actual settler! If the authority which Ayuntamientos, Justices of the Peace, &c., have sometimes exercised to grant building lots and lands within their demarkation, is not derived by delegation from the Government, they have acted *without* authority, for no law has been, or ever can be produced showing that they ever possessed any other. The power, whenever they have possessed it, has always been given, restricted, modified, and taken away at the pleasure of the Government.

As to any *property* which the Corporation may possess, no part of it can be alienated without express license of Government in each particular case given upon formal *information* of necessity and utility (vid. ante § 22, 23). A *general* license would be equivalent to a repeal of the law imposing this restriction, in the same manner as if a judge should assume to give to all minors or their guardians, within his jurisdiction, general license to alienate their landed property at pleasure.

granting lands or lots, was derived, so far as they really possessed it, either from the government of the department, or from the prefect. *No other authority ever has been, or ever can be shown.* In 1835, the governor, with the concurrence of the Territorial Deputation, delegated to the ayuntamiento of the *Cuasi Pueblo* of *San Francisco de Asis*, the power to grant lots not exceeding 100 varas square "in the locality (*parcje*), named *Yerba Buena*," with the restriction that such grants should not be made within two hundred varas of the beach, a restriction which does not seem to have been removed while the Mexican Government continued (see Doc. No. 6, annexed to the deposition of M. G. Vallejo). Authority was also given from time to time, to make grants in other localities, the governor himself continuing to grant within the same limits, whenever he thought proper, the parties interested resorting to him directly, whenever their application was for a larger quantity of land than that which the subordinate authorities were authorized to grant by the superior order which ruled for the time being.

§ 97. It is strange that we should have committed any mistake in respect to the source from which the authority is derived for granting town lots in those places which have grown up on lands belonging to the Mexican nation. In towns which may grow up on private lands, no one would doubt that the authority for granting lots would reside solely in the proprietor and his duly constituted agents. It is true that *poblaciones* (towns) are not permitted to be formed without license from the supreme power of the State (*Compendio del Derecho Publtco y Comun de España* v. 1, p. 330, *Ordenanzas de Tierras y Aguas p.* 80.) But the prohibition or the license to form *poblaciones* has nothing to do with the property in the lands which may be occupied for that purpose. That must be acquired from the lawful owner. A simple reference to the archives of the Departmental Government, and to the records of grants made prior to the American conquest, in the place called Yerba-buena, and in the secularized Mission of San Francisco which will be found set forth in detail in Doc. "E." would have set us right on this point. The local authorities or municipal, of the Msssion and so called *Pueblo* of San Francisco, by whom these grants were made in the two places referred to, never pretended to have any inherent power, or authority *ex officio* to make them, much less did they claim for the town any property in the lands granted, but acknowledged that the authority was derived from the departmental government, taking especial care to have this appear of record in the book of protocols for the security of the respective grantees.

§ 98. It appears by the certificate of Washington A. Bartlett, who then filled the office of Alcalde, by appointment from Capt. Montgomery, dated August, 1846, that he "applied to Don Jose dc Jesus Noe, the Alcalde of said town under the late Government of California, to surrender all public archives and documents, when this book (the one on which the certificate is endorsed) was given up as containing the only record of the grants of lots in said town of *Yerba Buena.*"

This book purports to contain the record of all the grants made in the Pueblo or Mission of San Francisco and the place called Yerba Buena at any time prior to the date of its delivery over to the American authorities. The dates of grants commence in 1839 and end with the 6th of June, 1846. It commences by recording the *authority* of the functionaries by whom the grants are made, and for this purpose has three titles or headings following each other successively. The first is as follows:

"Book in which are evidenced the possession of *solares* in the point (*punto*) of Yerba-buena in virtue of the orders (*lo dispuesto*) of the Departmental Government."

In the second: "Are evinced those granted in the establishment of *Dolores* in pursuance of the authority applied for (*lo pedido*) by the Prefecture of the district to the Government of the Department, of which I have cognizance, as evidenced by the official note which is found on page 2."

The third gives the "Formula showing the mode in which possessions of *solares* to form habitations, have been given to the citizens (*vecinos*) of the jurisdiction of San Francisco de Asis."

The official note referred to which was written by José F. Castro acting as Prefect *ad interim* states that he had received from the Secretary of Government

an official communication under date of 16th of April, 1851, reciting that when the Prefect Don Jose Castro made a visit to the North, he bore with him instructions from the Government on various subjects, and among others it was ordered that *solares* might be granted to individuals in the establishment of Dolores, but they must not exceed fifty varas, which dispositiou of the Government was now renewed in consequence of the official communication of the Prefecture dated the 6th of the same month which his Excelleucy (the Governor) had seeu.

§ 99. In this book are recorded fifty-five grants, in all, including those which had been made at the Mission and at Yerba Buena; of these, ten were made either directly by the Governor or in pursuance of his *especial* order, four or five were made in pursuance of a special decree of the Prefect made in each case. These grants made by the Governor and the Prefect, are as well of fifty vara lots, as of hundred vara lots, and some of them are also for lots situated more than two hundred varas from the beach. Two of the grants were made by the Governor on the 22nd April, 1846. The remaining grants appear to have been made in virtue of the authority given by the Departmental Government which is referred to on the first page. One of the grants made by the Governor, was in the form of a license to erect some sort of machinery, and the decree of concession contains these unequivocal words respecting the property in the land:—"It being understood that as soon as the said *solar* shall be disoccupied by the machine referred to; it shall remain to *the benefit of the nation* for the uses convenient."

It will be observed also that no mention is made in this book of any town or "*Pueblo*," although reference is frequently made to a *plan*. The place in which the grants this side of Mission Creek are made, is designated and identified as the *punto* [point] or [paraje] [locality] of *Yerba Buena*.

§ 100. There is therefore not only no evidence of a grant or appropriation in any form of any lands to any town or *Pueblo*, and uo evidence that any lands were ever supposed to belong to any town, or were ever claimed by auy town within fifty miles of this, but there is the clearest proof to the contrary. In the case of the United States *vs.* New Orleans, [10 Peters] there was evidence that the corporation had occupied the land in question, for upwards of a century, and by maps and other evidence, the court thought a dedication of the land to public use, was sufficiently established, and, in all the cases heretofore investigated in our courts, where towns have set up claims to lands, the right asserted, has been sustained by *some* evidence.

But this claim has none whatever, not even the weakest presumption to rest upon. No grant, not even the initiatory steps to obtain one, not so much as a *desire* appears to have ever existed to obtain one, or to have any lands; no dedication to public use: no possession or occupancy; no acts of ownership; no right asserted or once alluded to at any period of time, on the part of the *imaginary* corporation which the claimant preteuds to represent. Surely the case is a very remarkable one.

§ 101. But in the absence of a single relevant *fact*, I am willing that the counsel for the claimant, should avail themselves of every *conceivable* or *imaginary* one, that might legally have existed. Keeping themselves within the bounds of what is legally possible, let them for once only, frame a grant, document, or title *nunc pro tunc*. I will not trouble them with any captious objections about the formalities preceding or attending its execution; only let it be reasonable and possible, for therein consists the true spirit of romance. Let it not conflict with the laws and the customs and the common sense of the times and the country in which the thing is got up. I will only beg to be informed by *what authority* and under *what law* the document is issued.

In the case of Cohas *vs.* Roisin and Leguis, [not yet reported] in the Supreme Court of California, the Chief Justice said: "I am satisfied that long before the grant on which this controversy arises was executed, the *Pueblo* of San Francisco was organized and a grant of Pueblo or municipal lands made to it by the Governor and confirmed by the Territorial *Legislature* of California." Is this fancy, or is it fact? That it is not matter of fact, is evident, for if it were, in a case so needy as this, his Honor would have received a *consular duces tecum* invitation to produce the document. It is fancy then, and it is in point, as I have allowed the counsel to *imagine* the best document they can in support of their claim.

§ 102. This *imaginary* Document then emanated from the Governor and Territorial Deputation [not Legislature, for no such body existed]; as such I shall proceed to test it by the laws. I presume it will not be pretended that the Territorial Deputation of California, while that body existed, had any Legislative authority. For by the constitution of 1824, [art. 50] it belongs *exclusively* to the General Congress "to give laws and decrees regulating the interior administration of the Territories." Much less will it be assumed that they had constitutionally any power to dispose of, or to make laws regulating the disposition of the National Domain. By the Constitution of 1812, [art. 324] and the law of 23d June 1813, [chap. 3,] which law remained in force mainly until the organic law of 20th March, 1837 was enacted, the Political Government of each Province was declared to be vested in a Superior Political Chief, whose powers and attributions are specially designated, together with those of the Provincial Deputation, [chap. 2,] which seems to have been not a *coördinate* but a *subordinate* branch of the Provincial Government. After the adoption of the Constitution of 1824, and the organization of the Territories of the Mexican Republic, their interior government and administration continued to be regulated by this law of the Spanish *Cortes*, so far as it did not conflict with the new constitution or laws of the Republic. The *Gefe Politicos*, continued to be appointed under the same name, and Territorial Deputations took the place of the Provincial, both exercising in the main, the powers conferred by the law referred to, with such additional ones as were given by special acts of Congress.

§ 103. On the 23d Oct. 1835, the Federal system was overthrown, and the *Bases* were established for a new Constitution, by which the States were reduced to the condition of Departments of the Nation, the Territories being also placed on the same footing, and the *whole* Legislative power of the Republic was to be, and by the 3d Constitutional law [art. 1 and 44] was vested in a General Congress. The Government of the Departments was encharged to the Governors with Departmental *Juntas* as their councils [*Bases* of 1835, art. 9 and 10—6th Constitutional law, art. 4,] which were directly subject and responsible to the General Executive or the General Congress, [*Bases* art. 10, 6th Constitutional law, art. 4 and 14]. The general powers of the Governors and Departmental *Juntas* were particularly specified in the 6th Constitutional law, and in the law of 20th March, 1837, regulating the interior government of the Departments [art. 4 to 60], by which the law of 23d June 1813, and other prior laws relating to the political—economical government of the Departments were abrogated [art. 191].

Although the *Bases of Tacubaya*, and the convention of the *Estanzuela* (of 28 Sept. and 6 Oct., 1841) clothed the provisional executive with extraordinary powers, the exercise of which, as to all his acts, was subject to the approbation or reprobation of the first Constitutional Congress, yet no attempt was made to change materially the general law which regulated the interior administration of the departments, but this continued in full force, and was recognized as the rule of government in the departments, even after the adoption of the *Bases Organicas*, [of 13th June, 1843,] and up to the time of the American occupation of this country, except so far as it is in conflict with the said *Bases Organicas*. By art. 15 of the 6th Constitutional law, the Departmental *Juntas*, are prohibited from exercising any powers but such as are therein expressed, which prohibition is renewed in the law of 20th March, 1837, [art. 59.]

§ 104. It is quite clear, therefore, if we bear in mind what has just been shown, that neither the Territorial Deputation, nor the Departmental *Junta*, either with or without the concurrence of the *Gefe Politico*, or Governor, possessed, the power to alienate any part of the national domain, either in favor of individuals or corporations, unless the authority can be found to have been conferred upon them by some law remaining in force in the Mexican Republic. That power is not contained in the law of 23d June, 1813, nor in the 6th Constitutional law which went into operation on the 1st of Jan, 1837, nor in the law of 20th March, 1837, regulating their *general* powers and duties.

We must look for it then in some special law. As the government cannot alienate any part of the national domain or national property of any kind without the consent of Congress, [see ante 80,] it is clearly requisite that the authority must

have been conferred by some act of the Mexican Congress, either upon the government in general terms, or upon some particular functionary. If it is conferred upon the government, no subordinate functionary can execute it, until the government has taken the initiative by giving general regulations or special instructions. It belongs to the supreme executive, and not to any subordinate, to direct the execution of the law in such cases. The only legislative disposition of the Mexican Republic, which can be supposed to authorize a gratuitous grant or a donation of national lands to towns or municipal corporations, is the 16th section of the colonization law of 18th August, 1824.

§ 105. There are some special acts of Congress donating lands, and several acts authorizing the sale on account of the treasury of certain lands particularly specified in them, and in some cases where sales have thus been made, towns may have purchased with license from the respective superior authority. But the said 16th section contains the only *general* provision, in virtue of which the government can be considered as authorized to make donations of public lands to towns, and that not directly, but as an incident, without which the power to colonize the Territories could not be executed with effect. I shall admit for the sake of argument that the power may thus have been conferred on the Supreme Government [*incidentally*] by the colonization law; and yet it is perfectly clear, that so much of the power conferred on the Supreme Government, was not delegated to the Territorial or Departmental Governments by the regulation of 21st Nov., 1828, which only authorizes the *Gefes Politicos* "to grant lands in their respective territories, to *Empresarios*, families, or private persons, Mexican or foreign, who may petition therefor for the purpose of cultivating or inhabiting them;" and as no shadow of authority is given them, any action which they might take could not create any equity against the government.

It will not be pretended that the claimant's "Pueblo" was either a private person, a family, or a contractor, [*Empresario.*] I do not doubt that the Territorial Government might, by virtue of the power conferred by the regulation of 21 Nov. 1828, and with the cognizance and consent of the Supreme Government, have entered into a *capitulacion* for founding a new *poblacion*, with any *capitulante* who would obligate himself to present in the character of settlers at least twelve families. But no such case has occurred, and if it had and the contract had been made conformably with L. 6, T. 7, Lib. 4, R. I. [ante § 62], the lands which the contractor would have been required to set apart for the town, that is as its private property, would embrace but a small portion of the tract assigned to him, and must have been segregated from the rest, described, and located, before any right to them could have become vested in the town, [see ante § 80.] But the power to grant lands directly to any corporation, is not given by this regulation, and was not possessed at any time by the Territorial Government.

§ 106. This appears to have been the understanding of the *Gefe Politico* and Territorial Deputation of California, when in the act of 6 Aug., 1834, they *proposed* the "Plan of *propios* and *arbitrios* for municipal funds of the Ayuntamientos of the Territory of Upper California," [Doc. "A,"] which [by Art. 20], was to be communicated to the Supreme Government, for the resolution of the General Congress therein, as appears by an accompanying letter of the same date, directed to the Minister of Relations, and by reference to article 20 of the "Plan" referred to.

The reason of its reference to the Supreme Government is apparent. Three things were proposed, which were beyond the powers of the *Gefe Politico* and Deputation. 1st. The concession of lands for *propios*, and the designation of lands for *ejidos* to towns. 2d. A regulation for the administration of *propios*. This subject being already minutely regulated by *law*, it was beyond the powers of the Deputation to make any alteration in the law, or to introduce any new plan for the management of the funds of *propios*. 3d. It was proposed to impose upon the grantees who should obtain *solares* for their personal use and occupancy, a certain pecuniary fee or duty. This authority is not conferred upon the *Gefes Politicos*, and Deputations, by the regulation of 21 Nov., 1828, nor by any other law or regulation whatever. It was competent, however, for them to propose those measures and communicate the propositions to the Supreme Government, as they did, for the corresponding resolution of *Congress*. It does not appear,

however, that the plan was ever adopted by Congress, or that any application was ever made by any town for the assignment of lands under it.

§ 107. I have maintained that the Mexican government, that is the executive, is constitutionally inhibited from alienating any public lands or other national property for any purpose whatsoever, without the previous consent of Congress, which can only be legitimately expressed in the form of a public law, and consequently that any disposition of the *Spanish Cortes*, or of the Spanish Government conferring such power of alienation upon any functionaries whatever, must be considered, *quoad hoc*, as abrogated. But allowing that this were not so, and that all the Spanish laws that were ever in force in the Mexican territory, might be brought into requisition, no authority will be found conferred by any of them upon any Governor or provincial Deputation to make donation of lands to corporations of any kind. It is not given by the decree of 4 Jan., 1813, for it would be in violation of the letter and spirit of that law.

That act was one of a series of radical reforms directed against the accumulation of landed property in the hands of corporations, by which in Spain particularly, a large portion of it had been withdrawn from commerce and from cultivation. It decrees the sale and hypothecation of a part of the public and common lands, on account of the national debt, and the donation of the rest to officers and soldiers, and to citizens who may be destitute of lands. It makes no provision for further acquisitions, by municipal corporations, but on the contrary ordains that those which they already possess shall be reduced to the condition of private property.

§ 108. The regulation and instruction for the Presidios of the Peninsula of Californias, &c., of 24th Oct. 1781, so far as it relates to the Political Government and the settlement of the country [tit. 14,] must be considered as superceded and abrogated by the regulation of 21st Nov. 1828, and the law of 20th March, 1837, [see law 20th March 1837, art. 191 *Dictamen* of the *Junta de fomento de Californias* upon instructions to the superior *Gefe Politico*, p. 11,] although while it remained in force it was only a *regulation* and *instruction*, prescribed by royal authority indeed, but not intended to change materially the general laws of the kingdoms of the Indies, in reference to the establishment of towns and the distribution of lands to settlers. It has hertofore been shown, that L. 7, and 14, T. 7, Lib. 4, R. I. are wholly inapplicable as they only prescribe the *Bases* of contracts to be entered into by the Government with private capitalists for the settlement of new places. The designation of lands for *ejido dehesa*, and *propios* is, according to the said law 14, to be made by those *who have authority* to make the discovery and new settlement or town [*poblacion*,] that is by the contractor according to the terms of his *capitulacion*. L. 1, T. 13, Lib. 4, R. I., contains a general provision relating to the designation of lands for *propios*. But the power to make the designation, is, by the very terms of that law, to be exercised only by the Viceroys and Governors, *who may have royal authority therefor*, and subject to the approbation of the King to whom report is to be made so that he may order it to be confirmed. The royal instruction of 15th Oct. 1754, gives no authority to Governors or any sub-delegates to make donations of lands to towns and the *Ordinanzas de Intendentes* if they contained any such authority were not applicable to California.

§ 109. Where are the *Spanish laws* then in virtue of which, the *Gefe Politico* and Territorial Deputation of California, might make a concession of lands to municipal corporations for *propios?* There are none, but if there were, they not only ceased to have any operation, in consequence of their being repugnant both to the Spanish Constitution and the Constitution of the Mexican Republic, [see ante, § 80,] but were abrogated by the law of 4th Jan., 1813. When the provisions of a law render those of a prior one wholly nugatory, and totally defeat the object of it, I think it may fairly be asserted that the prior law is effectually abrogated. Such is the character and the effect of the law of 4th Jan., 1813. with respect to all prior laws contemplating the donation or concession of lands for *propios:* That law provides that *all* the lands of *propios* and *arbitrios*, both in Spain and all its dependencies, shall be reduced to private property. Did the government which enacted this law intend that any of its agents should still exercise the power to donate; or did it contemplate any future donation of pub-

lic lands to towns for *propios*, when in the same instant, by the mandate of the law they must be taken away and converted to private use? Surely not. It intended to abolish the laws which provided for the reservation of lands for municipal purposes. It intended to uproot the system which had depopulated the country and proved destructive to the interests of agriculture. The powerful and conclusive reasons which had led to the adoption of this important reform in the agrarian laws may be seen very elaborately set forth in an an "Informe" of the *Sociedad Patriotica* of Madrid, in reference to the *expediente* submitted to it by the Spanish Government upon the "*ley agraria*,"* presented on their

* The *Informe*, after having treated largely of the expediency of reducing the *common lands* to private ownership and use, (see extract, ante note to §55,) proceed to recommend the same measure in regard to the lands which the towns, or some of them, possessed with title, under the character of *propios*, expressing the views of the Society in the following terms:

"Perhaps it will be convenient to extend the same measure to the *tierras consejiles*, so as to surrender them up to individual interest and place them in a state of useful cultivation. If, on the one hand, this property is as sacred and worthy of protection as that of private persons, and if it is the more worthy of attention inasmuch as its revenue is destined to the preservation of the civil State and municipal establishments of the councils (*consejos*); on the other hand, it is difficult to conceive why, until this time it has not been attempted to unite the interest of the *Pueblos* themselves with that of their individual members, and to derive from these lands a source of subsistence, and of public wealth. The *tierras consejiles* divided and distributed in *enfiteusis* or *censo reservativo* without ceasing to be the *mayorazgo* of the Pueblos, nor to supply most abundantly all the exigencies of their municipal police, would afford room for the establishment of a great number of families, which employing individual interest upon them, would cause them to yield considerable products with great advantage to themselves and to the community to which they may appertain.

"Your Highness has felt the force of this truth, when by your dispositions of 1768 and 1770 you ordered the distribution of the municipal lands to the *pelentrines* and small farmers of the Pueblos. But let it be permitted to the Society to observe that these dispositions would receive greater perfection if the distribution should be made in all parts, and of all the municipal lands and property; if it should be made by means of *enfiteusis* or *censo reservativo* and not by temporary renting, although it should be for an indefinite time; and in fine, if the citizens should be afforded the opportunity for the redemption of their pensions, and the acquisition of the absolute property in their *suertes*; without these qualities the effect of so salutary a measure will be always partial and dubious; because it is only a certain and secure property that can inspire that lively interest without which the *suertes* will never be advantageously improved; that interest which identified with all the desires of the proprietor, is the first and most powerful stimulous to banish sloth, and urge him to hard and unceasing toil.

"Nor would the Society think it inexpedient that absolute and unconditional sales should be made of these lands. It is certainly a very strange maxim which so religiously reserves these lands, at the same time that it deprives the communities of the most useful establishments. The draining of a lake, the navigation of a river, the construction of a port, a canal, a road, a bridge, accomplished with the price of the *propios* of a community, favoring its agriculture and industry, facilitating the abundant supply of its markets, and the exportation of its products and manufactures, might permanently secure the felicity of its whole district. What if the community should sacrifice its *propios* for such an object? It is true that the citizens would have to contribute with taxes to the preservation of the municipal establishments. But if, on the other hand, they should be enriched, would it not be better for them, having four, to contribute two, than neither to have nor to pay anything? For this reason, although the Society finds more justice and greater advantages in the *repartimiento* of these lands, it would not disapprove the absolute sale and alienation of some portions, where their abundance and the avidity of purchasers should induce a preference of that mode. The price of them entering into the public funds would supply to the communities a larger revenue, more easy to be administered, and attended with less risk; the which, appropriated to works of necessity or known utility, would bring to the *Pueblos*, benefits, much greater, more secure and permanent, than those which is produced by the ordinary investment of the municipal revenues.

"The custom of giving to the *Pueblos dehesas comunes* to secure the breeding of working cattle and colts, may present some modification of the generality of this measure. But if the necessity of such resources finds some support in the present subversion of our rural police, let it not be doubted that it will entirely disappear when this branch of legislation shall be brought to perfection, for then they will not only be unnecessary but injurious. Working cattle will always deserve the first care on the part of farmers, and in defect of public pasturage, there will be none who will not secure within their own *suerte*, in mowing grounds, if the climate permit, or in *dehesas*, if not, all that may be necessary for their herds. What else is seen in those provinces, the most populous, and best cultivated where such *dehesas* are unknown?

"It is very desirable indeed to preserve the race of good and generous horses for the army. But can it be doubted that private interest will perfect this branch of stock-breeding better than the laws, and municipal establishments? That the scarcity itself of good horses, if such should be a monentary result of the *repartimiento* of the *dehesas de potros* (town pastures in which horses are bred), will be the greatest stimulous to breeders, by the increase of prices consequent thereon? Why are the best Andalusian horses reared with so much pains in private pastures, unless because they are well paid for? Has the spontaneous increase of mules any other stimulus than the utility of this enterprize? How can this truth be doubted by any one who reflects that they are bred with the greatest care in the fresh pastures of Asturias and Galicia—that the colts are brought from thence to be sold in the fairs of Leon, that they are taken afterwards to be fattened on the dry and rich herbage of Mancha, in order to stock the stables of the *Corte*, (Madrid and its district). Thus it is that industry is stimulated, circulates, and resorts wherever interest calls, multiplying individual property in order to give a grand impulse to agriculture.

behalf by *D. Gaspar de Jovillanos*, and also in the report of the committee on agriculture made to the *Cortes* on the 22d Feb., 1812; containing the project of this law of 4th Jan., 1813, [12 *Diario de Cortes*, 88,] "The committee," [as they say] "find themselves deeply impressed with the same views which have governed Messrs. *Gordillo, Terrero, and Oliveros*, and the Minister of Marine, *ad interim*. Your majesty [*the Cortes*] has recognized them more than once, and they are now axioms with all lovers of the public weal. The preservation of the *baldios* which have erroneously been regarded as most useful to the *pueblos*, is really opposed to their felicity, and is one of the principal causes of the diminution of our population, agriculture and herds.

"Individual interest being disconnected from these extensive lands, *the community of* enjoyment has sterilized, and rendered them generally useless to all. They are treasures abandoned, which converted into private property would cause a vast increase of population, and become a source of wealth and prosperity to the State? Even the lands of *propios*, although less extensive, and somewhat better regulated in their enjoyment, experience the defect of improvement which is inseparable from all common property. In the possession of individuals they would produce incomparably more, and thereby much greater benefit would result to all the *pueblos* than by preserving their municipal possessions [*posesiones consejiles*,] the more so as without the necessity of preserving them, they can by other means secure the funds required for their municipal expenses."

§ 110. The law of 4th Jan. 1813, destroyed the whole system both of town commons and lands of *propios*. After it was promulgated no authority existed anywhere for granting, assigning, or reserving lands to towns, for any such purpose. Neither the King of Spain [while the Constitution was in force] nor the supreme Executive Government of the Mexican Republic, after its Constitution was first established, and much less any subordinate functionaries, could grant or authorize the reservation of any public lands for that purpose, without being specially empowered by some subsequent law. In the sovereign States, under the Federal system, the laws on this subject may have varied, because the general powers of legislation were vested in the local Congress of each, and the legislative authority of the Federal Government did not extend to subjects connected with the interior administration of the States. The laws enacted by the States may likewise have remained unrepealed, and consequently have continued to govern in matters of this kind, as well as others, after they were reduced to the condition of Departments, or mere districts and fractions of the national territory under the consolidated central government. It will be understood therefore that my remarks are only applicable to those Departments which had previously existed as territories, and over which consequently, no legislative authority but that of the General Congress had ever been exercised after the independence. Such was the condition of California. Texas on the contrary, [with Coahuila,] was a sovereign and independent State, governed by its own Constitution [adopted 11th March 1827] and laws, and having successfully resisted the centralization scheme, was never effectually reduced to the subordinate rank which the other Departments of the Republic occupied. For these reasons the rules which govern cases in that country, would would frequently be inapplicable in this. The designation of lands for *ejidos* in the Department of Sinaloa, under a decree or regulation of the Governor formed with the concurrence of the Junta took place under and by virtue of an express *law* passed by the *Legislature* or Congress of the *State* before it became a department, and which law not being afterwards repealed by the General Congress, remained in force, according to the principles laid down by the council of Government in the *informe* which has been cited [ante § 5]. No general act of the Mexican Congress has authorized any authorties to grant the lands or property of the nation to any corporation whatever, and therefore, it will probably be found that in all cases where such property has been aequired by municipals corporations in the Territories, it has been granted by a special act of Congress. At all events, it is perfectly clear that the Territorial Governors and Deputations were never empowered to make such grants, [See ante § 105].

§ 111. There is then no title for the claimant real or imaginary. Even the creations of that extraordinary fancy, which, with the assistance of the "able

researches of counsel" in the case of Cohas *vs.* Roisin el al., discovered secrets that were hidden to all the world, and which from the impossible nature of the facts assumed, must remain forever hidden, vanish before the light of truth and reality.

This result is no more than might have been expected. It seems to have been known several years ago. The author of an abstract of *Alcaldes* grants, entitled "Land Titles in San Francisco," observed that he was not aware that any absolute grant of territory was ever made to this town, although himself and others had diligently searched for it. Greater benefits might have resulted by giving his researches some other direction. For my part I have to confess that I have never looked after *that* grant; for to suppose it to have any existence but in the vague conception of those not well acquainted with the subject, would be in contradiction to the laws, customs and uniform policy of the country from which it must have been derived. If the search has been fruitless, no wonder, for nobody ever said that a grant had been made. Let us hereafter leave *that grant* to its repose in what may be considered the archives of all such documents—in the limbo of things lost on earth, and which will not be found in heaven.

§ 112. In the absence of all proof of any legitimate right or title, and in the face of the clearest evidence that the claim is unfounded, some support is expected from the 14th section of the Act of Congress of March 3, 1851, entitled "An Act to ascertain and settle private land claims in the State of California;" which declares "that the provisions of this Act shall not extend to any town lot, farm lot, or pasture lot, held under a grant from any corporation or town to which lands may have been granted for the establishment of a town by the Spanish or Mexican government, or the lawful authorities thereof, nor to any city, or town, or village lot, which city, town, or village existed on the seventh day of July, eighteen hundred and forty-six: but the claim for the same shall be presented by the corporate authorities of the said town, or where the land on which the said city, town, or village, was originally granted to an individual, the claim shall be presented by or in the same of such individual, and the fact of the existence of the said city, town, or village, on the said seventh of July, eighteen hundred and forty-six, being duly proved, shall be *prima facie* evidence of a grant to such corporation, or to the individual under whom the said lot-holders claim; and where any city, town, or village shall be in existence at the time of passing this act, the claim for the land embraced within the limits of the same may be made by the corporate authority of said city, town, or village."

§ 113. The provisions of this section afford no assistance to the *city's* claim. How is it that the provisions of this act, and what "provisions" of it shall not extend to any town lot, &c.? Undoubtedly, it will not be contented that *none* of the provisions of the act extend to the case contemplated in the 14th section, for if that were the case, it is difficult to see what advantages could be gained by presenting any claim under it. Without invoking the aid of the other sections of the act, or some of them, it would be impossible for the Board to take any action upon it, or for the claimant to derive any benefit from a confirmation. But "the provisions of this act," contained in the 8th section, which requires "that *each* and *every* person claiming lands in California, by virtue of any right or title, &c. shall present the same to the said commissioners when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies on in the support of each claim, shall not extend to any town lot, farm lot, or pasture lot, held under a grant *from* any *corporation* or town *to which lands may have been granted* for the establishment of a town by the Spanish or Mexican Government, or the lawful authorities thereof, nor to any city, or town, or village lot, which city, town or village existed on the seventh day of July, 1846, but the claim for the *same* [same what? the same town lot, farm lot, or pasture lot, or city, town, or village lot, certainly is meant] "shall be presented by the corporate authorities of the said town," [not always but] "or where the land on which the said city, town, or village stands, was originally to an individual, the claim shall be presented in the name of such individual, and [in such cases we, the American Government will not require the hundreds and thousands of lot holders in the different towns, in the outset to prove title in their grantor, but so far as regards their respective claims,] the fact of the existence of the said city, town,

or village on the said seventh day of July, 1846, being duly proved, shall be *prima facie* evidence of a grant to such *corporation*, [if the lot holders have derived their title from the corporation,] or to the individual under whom the lot holders claim, [where the land on which the said city, town or village stands, was originally granted to an individual] and where any city, town or village shall be in existence at the time of the passage of this act, the claim for the land embraced within the limits of the same may be made by the corporate authority of the said city, town or village;" but in this case, no presumption of any grant to said town, nor to the individuals whose claims may be presented by it, shall be allowed for three substantial reasons:

1. The town may have been founded or incorporated since the annexation of the country to the United States, in which case, it would be absurd to presume that any grant had been made to it by the Spanish or Mexican Government.

2. Or if founded before, the land may be claimed by the town in its own right, or may be claimed in part by individuals, or wholly by different individuals, or various individuals may present distinct claims to the same land, conflicting with that of the town and conflicting with each other; in which case such *prima facie* evidence, operating equally in favor of all, would in the one case, contradict and destroy itself, in the other it would give all claimants in towns an undue advantage over all others without any reason for it, or if a discrimination were made in favor of the town, against individual claimants, or in favor of one private claimant against another, such a discrimination would be in violation of the treaty, as well as the constitutional rights of claimants, and would moreover be infamously unjust in itself.

3. Because if the town has been built upon lands of the United States, Congress has already provided in the act of 23d May, 1844, and that of 3d March, 1853, that the said lands shall be entered at the proper land office for the several use and benefit of the occupants thereof, according to their respective interests.* For these reasons, with others too obvious to require the mention of them, and not being able just now to determine the exact dates, and boundaries, and the precedence that ought to be fixed and allowed to grants that may be pretended under this last clause, we must exclude the claimants from the benefit of any

* *An Act for the relief of the citizens of towns upon the lands of the United States under certain circumstances.*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That whenever any portion of the surveyed public lands has been, or shall be settled upon and occupied as a town site, and therefore not subject to entry under the existing pre-emption laws, it shall be lawful, in case such town or place shall be incorporated, for the corporate authorities thereof, and, if not incorporated, for the judges of the County Court for the county in which such town may be situated, to enter, at the proper land office, and at the minimum price, the land so occupied and settled, in trust for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of the lots in such town, and the proceeds of the sales thereof, to be conducted under such rules and regulations as may be prescribed by the legislative authority of the State or Territory in which the same is siutated: *Provided*, That the entry of the land intended by this act, be made prior to the commencement of the public sale of the body of land in which it is included, and that the entry shall include only such land as is actually occupied by the town, and be made in conformity to the legal subdivisions of the public lands authorized by the act of twenty-fourth of April, one thousand eight hundred and twenty (April 24, 1820), and shall not in the whole exceed three hundred and twenty acres; *and, provided also*, That any act of said trustees, not made in conformity to the rules and regulations herein alluded to, shall be void and of no effect; *and, provided also*, That the corporate authority of the the town of Weston, in the county of Platte, State of Missouri, or the County Court of Platte County, in said State, shall he allowed twelve months, from and after the passage of this act, to enter at the proper land office, the lands upon which said town is situate. 5 United States Stat. at large, p. 6.

Approved May 23, 1844.

An Act to provide for the Survey of the Public Lands in California, the granting of Pre-emption Rights thereon, and for other purposes.

Sec. 8. And be it further enacted, That the public lands, not being mineral lands, occupied as towns or villages, shall not be sub-divided or subject to sale, or to be appropriated by settlers, under the provisions of this act; but the *whole of such lands*, whether settled upon *before or after* the survey of the same, shall be subject to the provisions of the act entitled "An Act for the relief of the citizens of towns upon the lands of the United States, under certain circumstances, approved May 23, 1844, except such towns as are located on or near mineral lands, the inhabitants of which shall have the right of occupation and cultivation only, until such time as Congress shall dispose of the same; nor shall any lands specially reserved for public uses be appropriated under the provisions of this Act." U. S. Statutes at large, for 1852–53, p. 247.

Approved, March 3, 1853.

extraordinary legal presumption. This is to my understanding, the true reading of the law, and no other construction can be put on it without rendering it wholly inoperative.

§ 114. Nothing can be clearer than that the first part of the section which speaks of *town lot, farm lot, pasture lot, or city, village, or town lot*, was not intended to give any advantage to any individual or corporation claiming lands, by virtue of any right or title derived *directly* from the Spanish or Mexican government, but like the Act of 23d May, 1844, and 3d March, 1853, which makes it the duty of the municipal authorities of corporate towns to enter at the proper land office, all the lands within their limits for the several use and benefit of the occupants thereof, according to their respective rights and interests, so this section makes it the duty of the corporate authorities of every town, to which land may have been granted by the Spanish or Mexican governments, and every town which existed on the 7th day of July, 1846, whether lands had been granted to it or not, to present before the Board in a general petition all the claims of lot holders within its limits, and as to those of them who hold under the corporation, a grant shall be presumed to have been made to the corporation, and as to those who hold under an individual, a grant shall be presumed to have been made to the individual.

The existence of the town on the 7th of July, 1846, is not to be *prima facie* evidence of a grant to the corporation in all cases, but it is to be "*prima facie* evidence of a grant to such corporation *or* to the individual under whom the lot holders claim." It was the convenience of the government as well as the numerous claimants in towns which probably induced this provision, and the desire to save the lot holders from the great annoyance and expense which would be occasioned by requiring them to present and prove up their claims, each one separately.

While the bill constituting this law was under discussion in the Senate, Mr. Berrien from the Judiciary Committee, by which it had been reported, explained fully the object and meaning of all its various provisions. I shall refer only to the remarks which were made upon the 14th section. In the first place Mr. Berrien proposed [Cong. Globe, 347,] the following amendment, in the tenth line of the 14th section: to insert after the word "towns," the words, "or where the land on on which said city, town or village is situated was originally granted by an individual, the claim shall be presented by or in the name of such individual," and said, "the object of the section is to prevent the provisions of this act from applying to any town lot, farm lot, or pasture lot held under a grant from any corporation to which lands may have been granted for the establishment of a town by the Spanish or Mexican government, or the lawful authorities thereof, nor city, town, or village lot, which city, town, or village existed on the 7th day of July, 1846.

"My information is that besides the city, town and village lots, constituted under grants from the Spanish and Mexican Government, there are places existing in California which have been founded by individuals, and which rest upon the title of an individual. The object of this amendment is to relieve each individual lot holder in each case from the necessity of going before these Commissioners, and pursuing his case to the Supreme Court, allowing the claim to be presented by the Corporation, and in the next place, by or in the name of the individual under whom the lot holder holds."

This amendment was agreed to, and Mr. Berrien then proposed another to the same section, by inserting after the words "forty-six," the words "*being duly proved*," which was also agreed to, and Mr. Berrien then proceeded to explain in detail the various provisions of the bill, which, he said, "the committee had draughted with a view to carry out what was supposed to be the intention of the Senate." In relation to the 14th section, he remarked:

"The next provision of the Bill regards town lots. In the discussions which had been before the Senate, the other day, we were informed that there were cities and towns in California, to which lands had been granted by the Spanish and Mexican Governments; and that the corporate authorities of those towns were authorized to issue to individuals grants for town lots, building lots, and for farm and pasture lots. The Judiciary Committee believed that it would not be

proper to subject *each individual lot holder* to the necessity of sustaining his claim to the town, farm or pasture lot, but deriving the title from the corporate authority, that it would be sufficient if the claim was presented in the name of the corporate authorities."

"It was further found that there were certain cities, towns and villages in California, the land constituting the sites of which, had not been granted by the Spanish or Mexican government, but by an individual, who has been the founder of the city, town, or village, or who has conveyed to individuals the lots which they hold, and upon which property of vast value has been erected. It seemed to the committee that this also required to be provided for, and, therefore, the object of the 14th section of the bill is, to declare that in this case it will be sufficient for the claim to be presented by the corporate authority of the city, town, or village, or the individual, where the title was derived from an individual, under whom the lot holders hold. And in order to give security to those lots holders, who hold under the faith of these grants from the Mexican government, or relying upon the individual title under which they hold, have erected in many cases extensive and valuable buildings, the Bill provides that the "existence of such city, town or village on the 7th day of July, 1846, shall be *prima facie* evidence of a grant to such corporation, or to the individual under whom the said lot holders claim."

It was on a subsequent occasion proposed by Mr. Benton to amend the Bill by making a donation of all vacant lands within the corporate limits of towns to the corporation which was resisted by Mr. Berrien who said that the sole object of the Bill was not to confer titles but to ascertain them, and the amendment was not agreed to. [Cong. Globe, p. 427.]

Mr. Senator Gwin always opposed in the Senate any donation to towns, and said, that "he was against any legislation on the subject," but advocated a liberal policy towards the actual occupants and improvers of lands and lots. [Appendix to Cong. Globe, 31st Cong., 2d Session, p. 58 and 130.]

§ 115. It is true this presumption of a grant to the town is unnecessary for the protection of individual lot holders. It would be sufficient that the municipal or other functionaries had authority to grant the lots claimed, and this ought to be presumed if they exercised it, in the absence of proof to the contrary. The power to grant in no manner arises from the right of property in the town, *partido*, district or department in which the granting officer exercises his functions, but depends solely upon the authorization of government. Congress, however, seems to have supposed that to sustain the validity of grants by municipal officers, the town must have the property in the lands granted, whereas the truth is just the reverse, for having the property, by the Spanish and Mexican law, they could not alienate it without special authority from government in each individual case, given upon full cognizance of the cause, the reasons and the necessity (vide ante, § 22, 23 and 95, note). But Congress seems to have been under a different impression, and therefore, to save the lot holders, said, that when they came before the Board claiming under a town, or an individual who previously owned the lands on which the town had been built, the government would consider the fact of the existence of the town on the 7th of July, 1846, as *prima facie* evidence of title in their grantor, to avoid the necessity of proving up the same original grant in numerous cases.

§ 116. But in order to this, the existence of the town at that date must be clearly proved, and must not be left to depend on conjecture or presumption, but must be proved by legal and competent evidence. Every fact, and every act, which consists in records and documents, must be proved by the records and documents themselves, and the previous existence of these, and the loss of them must be clearly established before any secondary evidence can be admitted. The existence of the town as a *corporation* must be duly proved, not some settlement or body of citizens concentrated at some point, however numerous, but their erection into a body politic, and corporate by competent authority, and in the form prescribed by law. Because this section speaks of grants from any corporation or town, and makes the fact of the existence of the said city, town or village on the 7th day of July, 1846, when duly proved "*prima facie* evidence of a grant to such *corporation*, or to the individual under whom the said lot holders claim." The claims of the lot holders (that is the claim for

any city, town or village lot) though derived from an individual to whom the lands on which the town is built was originally granted, may be presented by the town in the name of the individual, if the individual does not himself present it. It is to be presented *by* or in the *name* of the individual, and if the private interest of the individual should not induce him to present the claim, or should he be dead or absent, or should neglect it from any cause, it becomes the public duty of the corporation to protect its own citizens by presenting it in his name.

§ 117. It is the duty of the corporate authorities of every town which existed on the 7th day of July 1846, to present the claim of its citizens for all the lots which they hold under a title derived previous to that period, whether by a grant from the town or from an individual, and in such case this important advantage is gained, that the government will consider a *prima facie* title as made out in favor of the respective lot holders, claiming under the town, or the individual on whose lands the town was built, will consider the fact of the existence of the town on the said 7th July, 1846, as *prima facie* evidence of a grant to such corporation or to the individual under whom the lot holders claim.

This duty the City Fathers of San Francisco have wholly neglected. They have abandoned the lot holders. They have not presented, acknowledged, or even referred to the claim or right of a single individual lot holder. They have assumed a position adverse and hostile to all. The law speaks of those claiming by grant *from* a corporation or town, or *from* an individual on whose land the town has been built, and in that spirit of benevolence and liberality which characterises the Federal Government, aims to protect the individual claimants and occupants of property in all the towns of California. But this protection to property, if it was once attainable, has been lost by the negligence of the corporate authorities of San Francisco. They have abandoned their constituents. The corporation claims all the lands within the limits of the city of San Francisco, and for many miles beyond them, "except so much thereof as had been granted by the authorities of said Pueblo in pursuance of law."

§ 118. I will suppose that all which had been granted at all previous to the date referred to (7th July, 1846,) had been granted "in pursuance of law," which must be presumed, yet all these grants do not exceed sixty or seventy lots, leaving three thousand surveyed lots below Larkin and Johnston streets, which cannot be estimated at less than thirty millions of dollars exclusive of improvements, not excepted from the claim of the corporation. But suppose that a confirmation and patent to the corporation would inure to the benefit of those who hold under grants made "in pursuance of law," subsequent to the 7th of July, 1846 and before this city was chartered, how few of the lot holders would be included in that category, even supposing that the Mexican law and instructions and authorizations of Government remained in full force? In the first place, all the holders of property within 200 varas of the beach would be excluded. The foundations of property worth at this time twenty millions of dollars, including improvements, would be overturned, for to this property our act of the Legislature confirming "Alcaldes" grants, does not extend, and every body knows that no municipal officers ever had any authority whatever to grant lots within these limits. If the land were confirmed to the city, the occupants of this property who have expended so many millions in improvements on it, would derive no benefit from the confirmation, because they do not hold under the corporation by a lawful and valid grant, which it would be obliged in law to acknowledge.

§ 119. In the next place, it is equally clear, that every grant, if made *in pursuance of any law*, must, to have any force or validity, and to confer any right of property, have been made to a resident citizen for his personal use and occupancy, and that he must have enclosed, built upon, inhabited, cultivated or occupied it in his trade, profession or business, and if he occupied one lot, it is quite clear that he could not occupy two at the same time, and if he could, two could not lawfully have been granted to him. Who told an *Alcalde, Ayuntamiento* or Justice of the Peace of San Francisco, to do what the Supreme Government of the Mexican Republic could not, to grant, sell or give, five, ten, thirty or fifty town lots to a single individual in a day? Not the law, certainly. No authority, ancient or modern, can be found for such a scandalous proceeding. It

is unnecessary to speak of the legal requisites in making grants which must frequently, if not generally have been omitted by American Alcaldes through ignorance of the laws under which they were acting. Disregarding forms, and looking at the substantial and unmistakeable language and requisites of the law, it is certain that not fifty grants made since the war, out of the thousands which have been mentioned below Larkin and Johnston streets, would possess any semblance of legality such as the present corporation would be bound to acknowledge. Here a confirmation to the city would unsettle the titles to at least twenty millions of property, nearly all of which has long been occupied and improved at the expense of many millions more.

§ 120. There is another class of void titles to lots, which would immediately be brought upon the arena of legal strife, if this claim could be confirmed, the number of which cannot be easily calculated, but *their name is legion.* I mean the grants made *nunc pro tunc.* Those who have resided here for the last seven years, and been acquainted with the public records, can appreciate what I say. Then come the grants made by Alcaldes to themselves through the intervention of third persons, and the distribution made by the *Ayuntamientos* of the years 1847, 1848 and 1849 among themselves, all of which are contrary to the express letter of the law, as well as to the well recognized principles of equity and morality. It is in vain to say that by some future action of the corporation, the actual occupants and improvers of this vast amount of property would be secured in their possessions. It is better to "let well enough alone."

If this claim is rejected, they are already secure by the provisions of the act of Congress, of May 23, 1844, and March 3, 1853, which give the land to the actual occupants at the *minimum* of $1.25 per acre, and if any future action be requisite, who would not rather trust to the just and equal legislation of Congress, than be left at the mercy of a corporation, whose ill adapted and erroneous policy on this subject has already destroyed all public confidence.

§ 121. There is, however, one class of titles that would be effectually and irrevocably settled by a confirmation to the city, I mean those who hold under judgment sales, commonly known as "Peter Smith" proprietors. The many hundreds of lots below the streets which I have mentioned, and the fifty or sixty thousand beyond those streets would become their lawful prey. I cannot blame them for pouncing upon it, when it is within their reach, but I would ask what protection is to be expected from a corporation which has thus abandoned its constituents to suffer the loss of more than ten millions of property *

It is matter of public history, that when the *Ayuntamiento* of 1849 was installed, this town was free from debt. That body and its successors, after disposing of more than twenty millious of landed property within the short space of four years, and suffering the sacrifice of nearly all the rest within the city

* *Statement of Lands sold on Judgments according to the evidence introduced in this case before the United States Board of Land Commissioners.*—The property within and adjoining this city which has been sold at sheriff's sales, on executions against the city, is as follows:

On the 8th of July, 1851, 2 fifty vara lots (and 5 wharves, all the wharves of the city then built, or nearly, except Commercial or Long Wharf.)

On the 19th of September following, 40 one hundred (or 160 fifty,) and 55 fifty vara lots, making in all 215 fifty vara lots, were sold, all of which were held either under Alcalde grants, or by the Commissioners of the Funded Debt of the city.

On the 14th of June, A. D. 1851, the sheriff sold 30 entire blocks and 7 one hundred vara lots, besides 102 water lots.

On the 26th November, 1851, the Sheriff sold 24 entire blocks, comprising about 300 fifty vara lots, and the entire number brought only $1275, as appears on the official books of the Sheriff.

On the 30th January, A. D. 1852, the Sheriff sold 16 fifty vara lots, 33 hundred vara lots, and 15 entire blocks, and a piece of land near Johnston street and Mission Creek, containing 5 blocks making in all about 400 fifty vara lots, and also at the same sale, three large tracts of land extending in a belt two miles wide, entirely around the surveyed limits of the city except on the water, which leaving out so much of it as is covered with water, may be described as follows: Beginning at the intersection of Larkin street with the bay, and running thence along the natural high water mark of the bay, to the distance of two miles in a straight line, thence south on a line parallel to the line of Larkin street, about four and a half miles, thence east to the said water mark to the south of the city, thence along said water mark to a point two miles south of Clay street, thence to the junction of Folsom and Corbett streets, thence along Corbett to the line of Larkin street, and along Larkin street to the place of beginning. Only a trifling portion of the water property around the city which has been sold under the same executions and judgments is included in the above description.

NOTE.—It is believed that the whole amount for which the foregoing property was sold, will be considerably less than $10,000.

limits, have left us, as a slight token of remembrance, a debt to cancel of two millions of dollars.

§ 122. It has been suggested that the rejection of this claim would involve the city of San Francisco in difficulty on account of the numerous grants and sales of lots since the 7th July, 1846. As to the period which elapsed previous to the incorporation of the city, it is sufficient to say, that if a municipal corporation existed during that period, and it were the owner of lands, none of the municipal authorities had any power, to either sell, or grant, or encumber any part of such lands, and if they attempted to do so, the grant, sale, or encumbrance would be void, and the functionaries attempting to execute them would be *personally* liable for all consequences both to the corporation and the other parties injured. Such is unquestionably the Mexican law, which must govern this subject during the period just referred to. [Ante § 22, 23 and 95, note: § 46.] The corporation might recover its lands, and the grantees or incumbrancers would have to look to the delinquent officials personally, for their redress. So that a confirmation would be the most disastrous result that could take place to almost every lot holder in the city, and still more so to the Alcaldes and members of the Ayantamientos of 1847, 1848, 1849 and 1850. Nothing but a rejection of the claim, can save them, in which event, neither the officials can be arraigned by the corporation for their mal-feasance in relation to property not its own, nor the lot holders, by any attempt of the corporation to re-vindicate its property. The lot holders will then be secure under the Act of Congress. As respects any sales made by the *city*, no liability on the part of the corporation can result for two reasons. First, it is presumed that the conveyances have been, like almost all conveyances of public property, without warranty. *Secondly*, the occupants who have purchased from the city, as well as those who may have purchased from other parties, are protected by the Act of Congress before referred to, and as they are not liable to be evicted, no action would lie, or be even attempted against their vendor, even though the conveyance has been by warranty. In California it is presumed that no person has been foolish enough to purchase property, which was in the adverse possession of other parties, possession having always been regarded here as almost the only evidence of ownership, and if some have adventured their funds in the purchase of adverse claims from any person or corporation, out of possession, the loss of them in consequence of having engaged in transactions which are reprobated by the laws of all well regulated communities, gives them no claim to any favorable consideration.

§ 123. It will thus be seen that the position taken on the part of the Government, is not in conflict with any rights of property, or claim to the possession of any property. It aims to disturb no individual in his possessions. It proclaims peace and tenders permanent security to all. At one cent per vara for lands now valued at $1000 per vara, it offers a patent to every occupant of lands in San Francisco, without respect to persons.

If we regard the interest of this great city as identical with the aggregate interests, security and welfare of its inhabitants, no event is more ardently to be prayed for than the rejection of this claim.

The result seems me to be inevitable, but if it *could* take place as soon as submitted, so many more days of peace would be given to the citizens, and property would be secured to its possessors upon a basis never more to be disturbed. It would be a year of jubilee to all except those who live by plunder. It would put an end to disputes about titles, and thereby destroy the occupation of some who make "gain by sooth-saying." It would cancel all outstanding claims, and relieve the whole population of actual occupants, and improvers of real property on which they have expended so many millions, from all fear of future molestation.

It would produce no panic anywhere but among the holders of Peter Smith stock, whose visages would very naturally exhibit for a few days, an aspect somewhat elongated. But this would be only temporary. They would soon recover their wonted cheerfulness in prospect of some new adventure, and one universal smile of satisfaction and contentment would lighten up the faces of the entire community.

CALIF

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DOCUMENTS, 25, 102

DEPOSITIONS AND BRIEF

OF

LAW POINTS RAISED THEREON ON BEHALF

OF

The United States, in Case Number 280,

BEFORE THE

U. S. BOARD OF LAND COMMISSIONERS.

THE CITY OF SAN FRANCISCO

VS.

THE UNITED STATES.

SAN FRANCISCO:
COMMERCIAL POWER PRESSES, SACRAMENTO STREET.

1854.

CALIFORNIA STATE LIBRARY

DOCUMENTS, EVIDENCE, &c.

To the Hon. the Board of Commissioners to ascertain and settle Private Land Claims in California.

The first document is the petition of the city for the confirmation of the claim. The petition was handed in to the Board about the 1st July, 1852.

The petition of the city of San Francisco, a municipal corporation of the said State of California, respectfully shows:

That the said city claims a tract or parcel of land situated in the county of San Francisco, and State aforesaid, and being so much of the peninsula whereon the said city is located as will contain an area equal to four leagues square; said parcel or tract being bounded on the north and east by the waters of the bay of San Francisco, on the west by the Pacific Ocean, and on the south by a due east and west line, including the area aforesaid.

In pursuance of the laws, usages, and customs of the government of Mexico, and an act of the Departmental Legislature of California, of November 9, 1833, and proceedings in pursuance thereof, the pueblo of San Francisco was duly erected and constituted a municipal corporation, with a municipal government, and with all the rights, properties, and privileges of pueblos under the then existing laws during the said year 1833; and there was then and there by the supreme government, in the manner by law prescribed, ceded and granted to the said pueblo for town lands and for common lands, all and singular, the premises herein first described.

The said pueblo continued and was the proprietor of all and singular the said premises (except so much thereof as had been granted by the authorities of said pueblo in pursuance of law,) and the said pueblo continued its existence as such municipality and proprietor until and after the accession of the government of the United States, July 7, 1846, and until by an act of the Legislature of the State of California, entitled an act to incorporate the city of San Francisco, the inhabitants and property of said pueblo were incorporated into a city, which city is now here exhibiting her claim to the premises aforesaid. The said act of the Legislature of the State of California is prayed to be

taken and read as a part of this petition. The same act was modified and changed by an act of the same Legislature, passed A. D., which is also asked to be taken and read as a part of this petition.

On the 7th of July, A. D., 1846, the then pueblo, now city of San Francisco, was a town of the population of about one thousand inhabitants, and on the 3d of March, A. D., 1851, the population thereof amounted to about thirty thousand persons, and that on the said 7th of July, and on said third of March, the said pueblo or city, under and by virtue of the grant aforesaid, and under and by virtue of the laws, usages, and customs of the government of Mexico and California, all and singular the premises aforesaid, except as aforesaid, were part and parcel of the land and premises of said pueblo or city.

There are several adverse claims to the one herein set forth.

One Jose de Jesus who claims one square league, part of said premises, as particularly appears by his petition therefor now before your Board, numbered thirty on the docket of claims. That Jacob Luis Leese and Salvador Vallejo claim two hundred varas square, part of said premises, which claim is particularly exhibited in the petition therefor before your Board, numbered 74 on the docket of claims. That James R. Bolton claims three square leagues (with exceptions) part of said premises, which claim particularly appears in his petition before your Board, and numbered 81 according to the docket of claims. That Josefa de Haro and others, the "Potrero of San Francisco" being one half square league, part of said premises, the particulars whereof appear in third claim before your Board, number 101 on the docket of claims.

That John F. Shultess, and others, claim thirty-seven vara lots, part of said premises, particularly described in his petition, on file with your Board, and numbered 171 according to docket of claims. That the said John F. Shultess also claims forty-seven other fifty vara lots, part of said premises, particularly described in his petition before your Board, and numbered 172 of claims.

That Josefa de Haro and and others, claim premises known as the "Laguna de la Merced," one league long and one half league wide, and particularly described in their petition before your Board, numbered 102 of claims, and which is also part of premises herein first described.

That one Thomas O. Larkin claims a tract of land, parcel of said premises, and including a portion of the incorporated limits of the city of San Francisco to the west, and running thence westerly along the waters of the bay to the Pacific Ocean, including the site of the Presidio, the quantity or particular description of his claim this claimant is unable to state. That Charles V. Stuart and Isaac N. Thorne claim a portion of said premises, known as Ridley's ranch, under a grant to Jacob P. Leese of one league and one half, situated contiguous to and

north of the Sanchez ranch, but a particular description thereof cannot be given by claimant.

The claimant represents to your honorable Board that all and singular the foregoing adverse claims are insufficient and void. That all of them were made subsequent to the establishment of the pueblo of San Francisco, and that the grants thereof were in the derogation of the lawful claim and right of the said pueblo. That some of them were made after the authority of the government of Mexico in the Department of California had been superceded by the authority of the government of the United States, that such is the fact particularly in the case of the lands claimed by James R. Bolton as aforesaid, and in the case of the lands claimed by Thomas O. Larkin as aforesaid; also in the case of the lands claimed as aforesaid by John F. Shultess and others, and by John F. Shultess. That all said claims are based upon grants made without authority of law, and in direct violation of the laws and regulations of the government of Mexico in force in Califoraia.

The said city of San Francisco now insists that by the Treaty of Guadalupe Hidalgo, the laws of nations, and the laws, usages and customs of the government of Mexico, in force in California, as also by force of the act of the Legislature of said State incorporating the said city, and the act of Congress of the United States, entitled "an act to settle the private land claims in the State of California," approved March 3, 1851, the said city has good and lawful claim to all and singular the premises aforesaid, and said city relies upon the said laws, usages and customs, and proceedings in pursuance thereof, upon the order made for the establishment of the pueblo of San Francisco, the record of other evidences of its existence, continuance and extent the grant to said pueblo as aforesaid, and upon such other evidence as may be adduced, touching the premises, upon a full exhibition and consideration of all which premises it is prayed that such claim be confirmed.

J. A. McDOUGALL,

For the city of San Francisco.

San Francisco, Feb. 11th, 1853.

On this day, before Commissioner Harry I. Thornton, came M. G. Vallejo, a witness in behalf of the claimant, city of San Francisco, petition No. 280, and was duly sworn, his evidence being given in English.

QUESTIONS BY CLAIMANT'S COUNSEL.

Question 1.—What is your name and age, and place of residence.

Answer.—My name is Mariano G. Vallejo, my age is 45, I reside in Sonoma, and have lived in California all my life.

Ques. 2.—What office did you hold in 1834, 1835, and 1836.

Ans.—I was at that time commandante of San Francisco, and of the northern frontier of California.

Ques. 3.—Examine the document now here shown to you, filed herewith, and marked Exhibit No. 1, and say whether you are acquainted with the hand writing of Governor Figueroa signed thereto, and if yea, whether his signature thereto is genuine or not, and state further what you know in regard to that document

Ans.—I have examined the said Exhibit, and am well acquainted with the hand writing of Figueroa signed thereto, having often seen him write, and have no doubt that his signature thereto is genuine. This document was transmitted regularly to me, and recorded officially with others for my instruction and guide in the discharge of my duties.

Ques. 4.—Examine the document marked Exhibit No. 2, and filed herewith, and say whether you are acquainted with the hand writing of Francisco de Haro, Francisco Sanchez, Joachim Castro and Juan Mirando, whose names are attached to said document, and if yea, state whether their signatures in and upon said document are their genuine signatures.

Ans.—I have examined the said Exhibit No. 2, filed herewith; am acquainted with the hand-writing of the persons named in the interrogatory and whose signatures are made on said document having often seen them write, and say their signatures, where they occur thereon are genuine.

Ques. 5.—Do you or not know whether the election of officers, as stated in this last above named document took place?

Ans.—The election of officers as stated in said document, did take place.

Ques. 6.—Examine the document now shown to you, marked Exhibit 3, and filed herewith, and say if you are acquainted with the hand-writing of Francisco de Haro and Francisco Sanchez, signed to said document, and if you can state whether their signatures thereto are genuine?

Ans.—I have examined the document marked Exhibit No. 3 herewith filed, am acquainted with the hand-writing of the persons whose names are signed thereto, having often seen them write, and their signatures thereto are genuine.

Ques. 7.—State if you know whether or not the election of officers referred to in this last named document took place as stated?

Ans.—I know that said election did take place as stated.

Ques. 8.—State whether or not a municipal organization of the pueblo of San Francisco was continued to the time of the occupation of the country by the United States from the period of the elections above named.

Ans.—There was a municipal organization of the said pueblo of San Francisco during the whole period above indicated.

Ques. 9.—In the papers received by you from Governor Figueroa in 1834 was there any one designating the boundaries of the Pueblo of San Francisco.

Ans.—There was a paper received by me from the Governor for that purpose.

Ques. 10—Examine the document now here shown to you marked Exhibit No. 4 to this deposition, and say whether to the best of your knowledge and belief it is a true copy of the original received by you as stated in your last answer written above.

Ans.—I have examined the said paper marked Exhibit No. 4 to this deposition and according to my best recollection it is a copy of the document received by me as above stated.

Ques. 11—State if you know where the original of the document No. 4 above referred to now is?

Ans.—I do not know where it now is if it be in existence; I put it among the Archives in the Pueblo, as I did other documents of that character.

Ques. 12.—Did you or not ever receive or have in your possession a copy of the original referred to as Exhibit No. 4, certified by Augustus V. Zamarano, the Secretary of the Government under Governor Figueroa?

Ans.—I did have in my possession a copy of the said original document referred to in my last answer certified by the said Secretary Zamarano as Secretary of the Government under Figueroa.

Ques. 13.—Do you or not know what has become of that copy so furnished to you?

Ans.—I think I have that copy among my private papers.

Ques. 14.—Have or not your private papers, among which this certified copy should be, been in the hands of Raymond De Saldo at any time within the last three months?

Ans.—I believe they have been in his possession within that time.

Ques. 15.—Has or not the said De Saldo a portion of your private papers now in his possession?

Ans.—I think he has not. I think he returned all my papers.

Ques. 16.—Did you or not mark out the boundaries of the Pueblo of San Francisco according to the boundaries described in document Exhibit No. 4 to this deposition?

Ans.—I did, before the time of receiving said document, proceed to mark out the boundaries, and sent down to Monterey an Expediente thereof, and they were established by me within two weeks after the date of the said dispatch Exhibit No. 4.

Ques. 17.—Do you remember any who were present with you at the marking out and establishing these pueblo boundaries, and if, name them?

Ans.—There were present those I now remember: Francisco de Haro, Jose Sanchez, Francisco Cazeres and Juan Miranda. There are many others whose names I do not recollect, and those that I do remember are not all dead.

Ques. 18.—Have you or not such a recollection of the boundaries established by you, as that you could now describe them and point them out.

Ans.—I have such recollection that I could point them out on the ground and all the boundaries made, in fact, are on reflection, not named in the copy exhibit 4, to this deposition.

QUESTIONS BY UNITED STATES LAW AGENT.

Ques. 1.—What extent of territory was comprehended in the partido of San Francisco under the jurisdiction of the Ayuntiemento.

Ans.—The partido comprehended the country on this side of the bay as far as Los Pulgas, and on the other side of the bay the Rancho of the Paraltas and Panoli; the jurisdiction of the Ayuntamiento extended only to the limits of the pueblo. The partido was under the jurisdiction of civil Alcaldes.

Ques. 2.—Did the inhabitants of all this territory take part in the election of the whole Ayuntamiento of San Francisco?

Ans.—The greater part of the inhabitants of the partido lived in San Francisco and voted there.

Ques. 3.—Did any of the persons who voted as electors for the Ayuntamiento of San Francisco, live out of the limits of the pueblo?

Ans.—All lived in San Francisco except Joaquin Castro, and I don't know whether he did or not.

Ques. 4.—Did the Ayuntamiento of San Francisco exercise jurisdiction over all the potrero?

Ans.—No sir I did not.

Ques. 5.—How long did the Ayuntamiento of San Francisco subsist?

Ans.—I do not recollect.

M. G. VALLEJO.

U. S. Law Agent, present. Sworn to and subscribed before me this 11th of February, 1853. HARRY J. THORNTON, Commissioner.

Examination continued of the same witness by the claimant.

Ques.—Examine the papers now shown to you and marked Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and filed herewith as Exhibits and say if the signatures of Jose Figueroa, Jose Castro, Nicholas Gutterrez, Francisco de Haro, Francisco Guerraro Palamares, Francisco Sanchez, Antonio Maria Peralta, J. de L. Cruz, Manuel Jemino, Jesus Noe, Juan N. Padilla, Juan Baulim and Robert T. Ridley are genuine or not?

Ans.—I have examined the papers which are marked as above in

CALIFORNIA SEP 30 1869 HIST.

interrogatory and to be attached hereto; I am acquainted with their hand-writing, having seen them write, and say that their signatures respectively, where they appear in and upon said marked papers, are their genuine signatures.

Ques. 2.—Was there, or not, a town on the present site of the city of San Francisco, on the 7th day of July, 1846, and on the 3d day of March, 1851.

Ans.—There was a town on the present site of San Francisco, on the 7th of July, 1846, and there was on the 3d of March, 1851, a town on the site called San Francisco.

Ques.—Have you, or not, in your possession now, the paper referred to in your deposition, above taken mentioned in your answer to question 12.

Ans.—I have the paper now in my possession, which was referred to in my deposition as above mentioned, which is now here by me produced to be attached to this deposition, and marked exhibit No. 18.

Ques.—Is, or not, the signature of Zamorano, if you know it, his true and genuine signature to the said exhibit No. 18.

Ans.—I am acquainted with the handwriting of the said Zamorano, having seen him write, and say that his signature in exhibit No. 18, is his genuine signature.

Ques.—Has, or not, this document referred to, exhibit 18, been in your possession ever since about the period of its date.

Ans.—I was in possession of it, except at the Bear Revolution, as it is called, in 1846; it, with my other papers, was taken from me, and retained until after my own release; I think my papers were not returned to me until early in the year 1847, by Lieut. Revere of the U. S. Navy.

Ques.—Is, or not, the paper now produced by you, and marked as above, exhibit No. 18, to the best of your knowledge and belief, a true copy of the original received by you from Gov. Figueroa, and delivered over by you to the Alcalde of the pueblo De Haro.

Ans.—I have no hesitancy in saying that it is.

Ques.—Does or not this paper Exhibit No. 18, contain a true statement of the boundaries of the Pueblo, as marked out by you?

Ans.—It does contain the boundaries as they were established by me.

CROSS EXAMINATION BY THE UNITED STATES LAW AGENT.

Ques.—When the Ayuntamiento was elected from the pueblo of San Francisco, were any other Alcaldes elected for the portions of the partido of San Francisco, out of the limits of the pueblo?

Ans.—I do not recollect.

Signed M. G. VALLEJO.

U. S. Law Agent present.

Sworn to and subscribed before me, this 15th day of February, 1853.
Signed H. I. THORNTON, Commissioner.
Filed in office Feb'y 11th, 1853. GEORGE FISHER, Sec'y.

Exhibit No. 1, *annexed to the Deposition of M. G. Vallejo.*

Gov. Figueroa, by an official note bearing date Nov. 4, 1834, makes known to Gen. Vallejo that the Territorial Deputation in use of the faculties conferred on them by the law of 23d June, 1813, had on the day before resolved that the *Partido* of San Francisco might proceed to elect a Constitutional Ayuntamiento which should reside in the Presidio of that name, composed of one Alcalde, two Regidors, and one Sindico Procurador, regulating itself in doing so by the Constitution in force and by the law of 12th of June (it should be 12th of July) 1830, and that report should be made of this resolution to the Supreme Government. That the Ayuntamiento being installed should exercise the political functions with which the Commandant had been charged, and that the Alcalde should exercise the judicial functions in defect of a *Judge of Letters.*

Exhibits No. 2 *and* 3 *annexed to the Deposition of M. G. Vallejo.*

That on the 7th December, 1834 and 13th December, 1835, primary elections were had for electors, who were to elect the municipal officers; the first being held in the Presidio of San Francisco, and the second in the plaza of the "Pueblo of *San Francisco* de Asis," but whether the election of Ayuntamiento took place, does not appear from any document on file.

Exhibit No. 5, *annexed to the Deposition of M. G. Vallejo.*

It appears that in the year 1835 the Constitutional Alcalde of "San Francisco de Asis," appointed an Assistant Alcalde for Contra Costa, which was approved by the Governor.

Exhibit No. 6, *annexed to the Deposition of M. G. Vallejo.*

That the Territorial Deputation, by a resolution of 22d Sept., 1835 authorized the Ayuntamiento of "San Francisco de Asis" to grant lots on which to build houses at the place called Yerba Buena, which lots were not to exceed 100 varas square, and to be distant from the beach 200 varas, for which grants the *canon*, or tax, was to be paid to the Ayuntamento for the benefit of the municipal fund (propias) which might be prescribed, (by the government of course,) and the Ayuntamiento in the execution of this authorization were to have respect to regularity in.

All which is communicated by Jose Casto, Gefe Politico, to the "Al-

calde of San Francisco de Asis," in a note dated 26th Oct., 1835, in order, as he says, that it may be made known to the residents of that *Pueblo*, so that they may not thereafter make their application to the government the granting thus authorized, being one of the favors which the Ayuntamiento can dispense.

Exhibit No. 7, *annexed to the Deputation of M. G. Vallejo.*

By an official note of 19th Jan. 1836, addressed by the Gefe Politico Gutieriz to the Alcalde of "San Francisco de Asis," this functionary is reminded of the necessity of a punctual compliance with the law of 22d July, 1833, requiring a monthly report of criminal causes.

Exhibit No. 8, *annexed to the Deposition of M. G. Vallejo.*

It appears that on the 3d December, 1837, in the "Pueblo of San Francisco de Asis" electors were chosen who, on the 8th Jan., 1838, (Exhibit No. 9, annexed to the Deposition of M. G. Vallejo,) elected an Alcalde, 2d Regidor and Procurador Sindico for the year 1838.

Exhibit No. 10, *annexed to the Deposition of M. G. Vallego.*

By this it appears that Governor Alvarado in a *Bando* dated 17th Jan. 1839, premising that owing to circumstances, the elections under the constitutional system (of 1837) had not yet taken place, and that he was desirous that the authorities which were authorized by it should be established, ordained that the constitutional elections should take place according to the law of 30 November, 1836, beginning on the first *Sunday* of March then next following and ending on the third *Sunday* of the same month; that one elector should be chosen for San Francisco, San Jose, *Villa* of Branciforte, Monterey, Santa Barbara, Los Angeles and San Diego; that for the purpose of carrying these elections into effect certain places named should be considered as *cabezeras* and among them the port of San Francisco was to be considered as the *cabezeras* of the whole frontier north of it, that is the elections were to be held there. This *Bando* appears to have been communicated by "Haro," to the Assistant Alcalde in Contra Costa.

Exhibit No. 11, *annexed to the Deposition of M. G. Vallejo.*

Don Manuel Micheltorrena by document dated Nov. 4, 1843, bearing the signature of himself and Manuel Jimeno, recites that although Justices of the Peace have been established in the pueblo of this department conformably to the law of March 20, 1837, the which confers upon them the same powers and obligations as those belonging to the Ayuntamientos yet it has been observed that in the capitals of districts subjects of various classes are daily occurring which prevent them from attending to the duties which devolve upon them in defect

of an Ayuntamiento; the Prefectures having also to cease for the coming year and as a resolution on the subject has been taken by the "Junta," in pursuance of the faculties conferred on them by the *Bases Organicas*, His Excellency orders that the law respecting elections of 27 April 1837, be put in execution under the following regulations:

1. That in Monterey and Los Angeles, being capitals of Districts Ayuntamientos, shall be elected, composed of a first and second Alcalde, four *Regidores* and one Sindico.

2. That in the "Pueblos of San Diego, Santa Barbara, San Juan *Villa* of Branciforte," "Pueblo de San Jose, San Francisco and Sonoma," there shall be elected two Alcaldes, a first and second.

3. That on the second Sunday of the following December *Compromisarias* shall be chosen, who, on the Friday preceding the third Sunday of that month will elect the authorities specified in the preceding articles, observing, as far as necessary, the provisions of the law of 19 June, 1843, in the part relating to "Elecciones, Secundarias," and other articles applicable.

4. That the first Alcaldes will discharge the functions of Judges of first Instance, conformably to the decree of 15 July, 1839, and will also be charged with the Prefectures of their respective Districts.

5. That on the 1st day of January, 1844, the newly elected officers shall enter upon their duties and receive from those going out an exact inventory of the *Expedientes Books*, and everything else pertaining to said "Corporations," in order that it may be passed over to the Departmental Assembly.

Exhibit No. 12 *annexed to the Deposition of M. G. Vallejo.*

A note dated 22d December, 1844, at "San Francisco," signed by persons purporting to be President, Vice President and Secretaries of elections, communicates to the Alcalde elect the notice of his election.

Exhibit No. 13, *annexed to the Deposition of M. G. Vallejo.*

Is an official note addressed by the Secretary of Government to the Alcalde of "San Francisco," respecting auxiliary military force, (dated July 7, 1844.)

Exhibit No 14, *annexed to the Deposition of M. G. Vallejo.*

Is a note of Micheltorrena to the "Alcalde of San Francisco," dated 11 March, 1844, acquainting him with an order that had been given to a military officer, to present himself with 12 or 15 men to the Alcalde of first instance of Yerba Buena, in order to suppress certain disorders which had occured, and enforce due respect to the authority of said Alcalde.

Exhibit No. 15, *annexed to the Deposition of M. G. Vallejo.*

Is a note dated 20 January, 1844, by the Secretary of Government addressed to the "first Alcalde of the *Port* of San Francisco," acknowledging the receipt from him of the inventory of things pertaining to that Juggado.

Exhibit No. 16, *annexed to the Deposition of M. G. Vallejo.*

Is a note dated 5 March, 1845, of the Secretary of Government to the first Alcalde of "San Francisco," communicating a decree of Government by which the note says: The Alcalde will be informed of the desires of his Excellency, and that his object is to secure by some efficacious mode, the property of the inhabitants of the department not doubting that he will have the due co-operation of the respective authorities.

Exhibit No. 17 *annexed to the Deposition of M. G. Vallejo.*

Then comes the inventory "of 1845 of all that has been archived from the establishment of the Ayuntamiento in 1835 until the end of the year 1845, and of the furniture, &c., of which Jose de la Cruz Sanchez, Alcalde going out makes delivery, to the citizen, Jesus Noe, 1st Justice of the Peace coming into office and beginning with the year 1846." It is dated at "Yerba Buena," Jan. 15, 1846, and is perhaps the most pertinent and interesting of all the documents, and evidence in this case at it exhibits at a single view the whole patrimony of the "Pueblo." It consisted at that date of a desk in which the archives were kept, a plain table, a new cloth carpet of ordinary quality, an inkstand, a brass candle stick, four chairs, a very good padlock, two chains, and a pair of fetters which just at that time, however, had been carried off but were to be hunted up. There was also an old woolen carpet which the Alcalde thought to exclude as "used up," after due consideration the old carpet was finally excluded as useless and receipt given for the balance by the Justice of the Peace.

Exhibit No. 18 *annexed to the Deposition of M. G. Vallejo.*

Political Government of Alta California.

Head-quarters General of Alta California.

The Government, satisfied with the zeal and activity which characterizes you, as well as the patriotism which animates you, sees in your official note of the 24th October last, a new proof of your vehement desire for the progress, and of your untiring efforts for the improvement and aggrandisement of your country and of your fellow-citizens.

In consequence, it affords me pleasure to inform you, in accordance

with its request, that the E. D. T. has adopted in its totality, the plan which you presented in your note aforesaid, with regard to the pueblo of San Francisco, declaring the boundaries to be the same that you delineated in the said note. That is, commencing at the little cove at E. of the Fortaleza, following the line traced by you as far as the shore, leaving to the north the *Casamata* and the Fortaleza; thence following the border of the said shore to the Point of Lobos on its southern side; thence following a straight line as far as the peak of the Devisedero, (Lookout,) continuing the said line towards the E. as far as the Point of the Rincon, embracing the *Canutales* and the *Gentil.* Said line shall terminate within the bay of the Mission Dolores, whose estuary shall serve for a natural boundary between the municipal jurisdiction of that Pueblo and the aforesaid Mission de Dolores.

The Government, in proof of the confidence which your services inspired, has arranged that you shall be he who will have the honor of installing the first Ayuntamiento in that Pueblo of San Francisco, for which you have already done so much.

You will therefore proceed at the time and in the mode provided by law to the election of the municipal authorities, in order that they be installed on the first of January of the coming year, 1835; setting apart for public buildings those edifices which to you may seem most appropriate.

God and Liberty.

Monterey, Nov. 4, 1834.

Signed, JOSE FIGUEROA.

Military Commander of San Francisco,

DON MARIANO G. VALLEJO.

It is a true copy,

ZAMORANO.

BEFORE COMMISSIONER ALPHEUS FELCH.

"My name is Julius K. Rose; my profession is that of attorney-at-law; my age, thirty years and upwards; and I reside in the city of San Francisco, in the State of California. I have resided in that city since August, in the year 1849; I did know a person of the name of Francisco Gurrero; I knew him from August, 1849, to the time of his death, which took place about one and a half or two years ago; I was very well acquainted with him; he was a client of mine, and was almost every day in my office, and I was at his house almost every Sunday. I have had conversations with him in reference to the boundaries or limits of the pueblo, of which the present city of San Francisco is claimed to be a part. I owned a piece of land at the Mission, and as it was all the land I had in the world, I felt very anxious to know what the title was. To ascertain this I had several

conversations with Mr. Gurrero, in one of which I asked him if this land was not included in the limits of the pueblo, the existence of which I then took for granted. He replied that it was not, and produced a plan of what he called the pueblo; he undertook to explain the boundaries of the pueblo to me from that plan, but as I was very little acquainted with the shape of the peninsula on which San Francisco stands, and knew but little of the Spanish language, he proposed to go out some day and look at the lines of the pueblo, and several other ranches. A few days afterwards, we went out on horseback, and he pointed out the lines to me of what he called the pueblo of San Francisco, as well as those of several adjacent ranches, to wit: the northern line of Buriburi, and the lines of Rancho de la Merced, Mr. Noe's rancho, which, I think, was called 'San Miguel'; Mr. Ridley's rancho, which, I think, is called 'Visitacion," and a rancho belonging to a Spanish woman, called, I think, 'The Widow Bernal,' and the rancho known as 'The Potrero.' The limits, as pointed out to me by him from a very high hill, were as follows: he described the boundaries as commencing just at the entrance of the bay at the Golden Gate, running from that point, to a hill about half a mile distant from that point; to the hill on which we stood, and which is a very high, round hill, from that place to the southern extremity of Rincon Point, where it runs into Mission Bay, and from that point by the line of the bay to the Golden Gate, at the place of beginning. The hill on which we stood was a conical hill, very high and running to a small peak. It could be easily distinguished, because it was the highest land in that vicinity, and one that a person would not forget, who had been on it once; I have heard it called 'Devisadero,' but never heard it so called until lately; I should think it was about one mile from the first hill which I mentioned in describing the boundaries; it may be much further; I never traveled the space between them. As near as I can judge, I should think it was about three miles from the Devisadero to the place where the line would strike the southernmost extremities of Rincon Point in Mission Bay; the point which I call 'Rincon Point,' in Mission Bay, is upwards of half a mile from the point known as Rincon Point, in the city of San Francisco; I cannot tell exactly how far. I considered Gurrero about forty years old when I knew him; he had been Justice of the Peace and, I believe, Prefect, but am not certain of that; he was a very intelligent man; I think he had a good knowledge of business affairs, and an excellent memory; I have heard it remarked, that he was the only Californian capable of holding his own after the Americans came here; he claimed to be a joint owner with Mr. Fitch, of a rancho of about half a league, near the Presidio; I believe it was under a title derived from a Governor of California. I asked him if he thought his title was good, and he replied in a jocular way, 'that his title to the land was good, if that of the pueblo was not good.'"

Question.—Describe more particularly the point of starting in the description of boundaries above given.

Answer.—The starting point is a promontory at the mouth of the harbor, near a pile of rocks which are always covered with sea-lions; from this point to the Devisadero, the line is not exactly straight, but deviates a little to the small hill before described; the lines would form an angle at the small hill of about a hundred and fifty degrees; I may be mistaken in my recollection of these lines; the land between the Devisadero and the promontory at the starting point is sandy, and in some places covered with small bushes; I could go on to the land and point out all these landmarks; I never heard Guerrero say by whom these lines of the pueblo limits had been marked out; I think it must have been about the year 1850, in the early part of that year, when Guerrero pointed out these limits to me; when I examined the map with Mr. Guerrero, I thought it did not give a correct delineation of the shape of the peninsula, but when we reached the top of the high hill I was surprised to find the shape of the country what it is, and I saw it corresponded with the general features as laid down on the map, but whether the map corresponded with the particular landmarks which he pointed out, I cannot say; I have never, to my knowledge, seen the map since. JULIUS K. ROSE.

BEFORE COMMISSIONER ROBERT A. THOMPSON.

My name is Henry L. Ford; my age, thirty years; and residence, Colusi County, California, I have resided in California since the 14th of September, 1842. In 1843, I knew nearly all the persons who resided in San Francisco at that time. In March, 1844, I was riding from San Francisco to the Mission Dolores, in company with Captain Hinckley, at that time Alcalde of San Francisco, and in the course of the conversation he stated to me that the pueblo line commenced at a point of rocks on the coast, beyond the Presidio, and ran over in a direct line, crossing Mission Creek near its mouth, to a point of rocks or boulders, at a place known, at that time, as the "Potrero." Capt. Hinckley died in 1846; he was regarded as a very intelligent man; I supposed him to be about forty years of age. I had a conversation with Francisco Guerrero, who died in June or July, 1851. A short time before his death, he was showing me a piece of land on the north side of Mission Creek, which he stated had been granted him by the Alcalde of the pueblo of San Francisco; he was standing on the south side of the creek at the time, and he stated, that the land on that side belonged to the Mission, and on the other to San Francisco; he also pointed out to me the way the line ran between the Mission and the pueblo, and where it would strike the bay which was very near the point formerly shown me by Hinckley; the place pointed out to me by Capt. Hinckley, was just below the juncture of the main creek with another, coming in on the south side.

Question.—Look on the map, marked A, and with the initials, R T, herewith filed, purporting to be a map of the northern portion of the county of San Francisco, and state, if you can identify on said map the point described in your last answer.

Answer.—It would cross near where the letter R occurs in the words "Mission Creek," which is identified by a small cross on said map; this place was called "Yerba Buena," when I knew it, from 1842 to 1846; it was generally called "San Francisco," by the Americans and English; the people of the country generally called it "Yerba Buena;" the Mission was called the "Mission Dolores." I believe Francisco Guerrero was Alcalde or Justice of the Peace of this jurisdiction before I came here; during the time that I knew him, he resided part of the time at the Mission and part of the time at his ranch on the coast; the piece of land which Guerrero pointed out to me in 1851 as having been granted to him by an Alcalde of San Francisco, he stated to me, was four hundred varas; I think I could point the land out if I was at the Mission; Mr. Hinckley lived in this place; the precise spot, as near as I can recollect, would be between Clay and Sacramento streets, and between Montgomery and Kearny; Jack Fuller lived between Sacramento and California streets, and between Montgomery and Kearny; in 1845, a Frenchman built a house in what is now known as "Happy Valley"; I do not know whether he owned the land; I know of no other this side of the Mission. HENRY L. FORD.

UNITED STATES OF AMERICA, } SS.
State of California. }

San Francisco, April 13, 1854.

This day personally came before Peter Lott, a commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, John J. Vioget, a witness on behalf of the claimant, in case No. 280, on the docket of said board, in which the city of San Francisco is claimant, and the said witness being duly sworn, on oath, deposed in the English language as follows, to wit:

The U. S. Law Agent is present.

QUESTIONS BY COUNSEL FOR CLAIMANT.

Question 1.—What is your name, age and present residence?

Answer.—My name is John J. Vioget; my age 55 years; I reside now in San Francisco County, California.

Ques. 2.—In what year did you first arrive at San Francisco?

Answer.—I arrived here in July 1837.

Ques. 3.—State whether or not you made a map of the town of

Yerba Buena, and if yea, in what year, and by whose direction was the map made?

Answer.—In the winter of 1839 and 1840, I was requested by the Alcalde, Guerrero, to form a plan of a town, former grants having been made in irregular form; I accordingly made a plan which brought most of those lots in the squares of blocks, some few would fall in the streets, one or two were so situated that the location of them had to be changed.

Ques. 4.—State what portion of the present city of San Francisco was embraced in plan you made out, and laid off into blocks and streets.

(This question objected to by the Law Agent, as improper without the map referred to, being presented.)

Ans.—The west side of Montgomery street was made the base line, and was intended for the city front; then I drew Sacramento street, Clay, Washington, Jackson and Pacific streets as they are now called, then at right angles Kearny street, Dupont, and as Capt. Richardson's house stood angling off from Dupont in that direction which went off towards North Beach; I laid off no streets south of Sacramento street, or west of Dupont street; I laid off the lots on the outside or south side of Sacramento street that had been previously granted; I recollect Fuller's lot on that side; Fuller's was the only lot on that side which I laid off, and Richardson's and Leese's west of Dupont.

Ques. 5.—State whether or not you received any instructions from the Alcalde how to make the plan of the town, or of its limits, and why did you lay off no other streets than those you have named?

[This question objected to by the Law Agent.]

Ans.—The only instruction I got from Guerrero was, to regulate the grants already made, and so as to have a regular plan for future grants, I mean by regulating the grants already made, that I should make my plan to accommodate the lines of the streets and blocks as far as practicable so as to embrace the lots already granted within that plan. There was no limit stated to me, I made no more streets, because I saw no necessity for them, I dotted them off so that they could be made afterwards if they wanted them. In my original map I marked the line from Rincon Point out to North Beach forming the blocks as the nucleus of the town where I have stated, that was on the old map which I sent to the Governor at Monterey.

Ques. 6.—When you were instructed by Guerrero to make the map or plan, did he state to you anything, if so what, as to the authority under which he was proceeding to have the map made?

(This question objected to by the Law Agent as hear-say testimony and incompetent.)

Ans.—He never gave it to me in writing, he told me the Governor Alvarado had ordered it.

Ques. 7.—Is Guerrero the Alcalde now living, if nay, where did he die?

Ans.—Guerrero is dead, I think he died a year and a half or two years ago.

Ques. 8.—State whether or not at the time you made the map or plan you have mentioned, you had knowledge of the existence of any prior map having been made of the town, before yours?

Ans.—I never saw, nor heard of any such.

Ques. 9.—Was or was not Capt. Wm. A. Richardson residing in the town, at the time you made the said map, and do you know whether or not he was aware that you was engaged in making the map or plat.

Ans.—Capt. Richardson's family was living in his house, but Capt. Richardson was sailing about the bay nearly all the time, occasionally he came home. I do not know whether he knew I was engaged, though he must have known it very shortly after it was done. Capt. Richardson's house which I speak of, was up on Dupont street.

Ques. 10.—State whether or not the fact that you were engaged in making the map and plat of the town, was at the time, when you were so engaged, a notorious, and well known fact?

Ans.—The inhabitants saw me doing the work, and I suppose they must have known what I was doing it for.

Ques 11.—When and from whom did you first hear of the map said to have been made by Capt. Richardson of the town of Yerba Buena?

Ans.—I never knew of the existence of any such map till Jose Y Limantour spoke to me of it last year.

CROSS-EXAMINED BY U. S. LAW AGENT.

Ques.—Where did you reside from 1839 to 1846?

Ans.—From 1839 to 1843 I lived in San Francisco on the corner of Clay and Kearny streets as it is now called, the southeast corner, and from 1843 to 1846 I was occupied as commander of a vessel mostly at sea, occasionally coming ashore.

Ques. 2. How were you occupied during the time from 1839 to 1843?

Ans.—I was occupied in trade, I was constantly here about the place during that period.

Ques. 3.—Do you know whether Francisco Guerrero, whom you have mentioned held the office of Alcalde or of Justice of the Peace at the time when he requested you to make the plan which you have referred to?

Ans.—We called him Alcalde, I certainly understood him to be Alcalde at that time, I do not know positively.

Ques. 4.—Look at the paper now shown to you, marked "Exhibit No. 1, A. F. annexed to the deposition of Victor Prudon, filed in No.

74," and state whether it is an exact copy of a plan to which you have referred as having been made by you at said Guerrero's request?

Ans.—This map is a copy not made by me, but is a copy of the map which I made and presented to Guerrero, with the exceptions of the dotted lines at the ends of the streets,. It differs from my map also in the way in which the Plaza or Portsmouth Square is laid down. My map made said Plaza to embrace all the block between Clay and Washington, Dupont and Kearney, except two fifty vara lots on the west side of said block. This map only makes the Plaza embrace one fifty vara lot. This map also differs from mine in the east part. Montgomery street is not laid off here in the vicinity of the place called on this map "Laguna," as it was on my map. I laid off the blocks on Montgomery regularly as far north as Pacific street, with the exception of one fifty vara lot at the corner of Washington street. The vacant space on this map at the corner of Jackson and Montgomery, was laid out as forming a lot on my map.

Ques. 5. Where did Francisco Guerrero reside and keep his office at the time he gave the order to you to make the plat, and where did he live afterwards till he died?

Ans.—He lived at the Mission Dolores at that time, and always afterwards till he died, I believe. I never knew him to live any where else.

Ques. 6.—Is the Mission Dolores the same place which was known and called by the name of San Francisco de Asis?

Ans.—It was more usually called Misson Dolores. I have heard it called Mission of San Francisco de Asis. It is the same place.

JOHN J. VIOGET.

Subscribed and sworn to before me on this 13th day of April, A. D., 1854.

PETER LOTT,
Commissioner for taking testimony &c.

TESTIMONY OF CAPTAIN HALLECK.

Question 1.—How long have you been in California, in what capacity did you come, and what offices have you held?

Answer.—I came in January 1847; came as an engineer officer to examine the Pacific coast with respect to its military defences, under the orders of the Secretary of War. A few months after my arrival, I was made Secretary of State of California, which office I held till December 1849, and as such had charge of the archives of the former government of California, and retained charge of them until some time in February 1850, at Monterey, when I delivered them over to Major Canby, Assistant Adjutant General. After I turned them over they were moved to Benicia by the Military Department, where they remained until delivered to the Surveyor General.

Ques. 2.—State whether at the time you had charge of the archives it became your duty, under any orders or otherwise, to examine and make reports upon them, and what was your opportunity to examine and know their contents?

Ans.—I was directed by Gov. Mason to examine the archives and report on certain points connected with the law titles, which I did; the examination was not very thorough in consequence of the archives being very voluminous. They were at that time in great confusion, located at different places in the town. Parts of the documents were found in different places. With the assistance of Mr. Hartwell I arranged them in the best manner I could under the circumstances.

Ques. 3.—Have you any knowledge of the loss of any of them?

Ans.—I saw a portion of the archives in the Custom House, which was then used as a hospital for the soldiers and marines. They were using them as waste paper. There were supposed to be Custom House documents, until they were examined and of no value. Some weeks after I picked from the floor a mutilated paper, and on examination found it to be part of an expediente of land title. Called Gen. Kearney's attention to the fact, and he sent Mr. Hartwell to examine them. He reported they were part of the archives, mixed up with the Custom House papers, when they were removed to a place of security. Another portion of what now constitutes the archives in the office of the Surveyor General, were brought by Col. Fremont from Los Angeles, in May, 1847. They were packed on mules and considerably torn from running under trees. They were in a very [] state. These constitute the papers of the archives at that time. Subsequently individuals brought in others, and when stated to be part of the archives, were filed, and the time of their filing endorsed on them.

Ques. 4.—State whether in the examination of any of these documents, you discovered any relating to the public lands of San Francisco or Yerba Buena, if so, what were they, and when did you last see them?

Ans.—I do not recollect to have seen any title or document defining the title of San Francisco or Yerba Buena. I recollect to have seen documents and correspondence between the Governors. Military Commandants and Alcaldes of the Presidio and Pueblo of Yerba Buena and San Francisco. These names were used indifferently. In these papers the municipal lands and common lands of the Pueblo were frequently mentioned *proprios* and *egidos*.

Ques. 5.—Can you particularize any of these papers?

Ans.—I cannot recollect the documents particularly; in the expediente of the Potrero Nuevo, the boundaries of the pueblo is alluded to, but not defined; showed the document to Jimeno, former Secretary of M. Torena; he said that at that time the exact boundaries of the pueblo were not known to him or M., and for that reason a

clause was put in making it subject to that line; this was the expediente of the young De Haro; that he believed the line at or near Mission creek.

Ques. 6.—State whether you have examined the Archives in the office of the Surveyor General, with a view to the title of the pueblo; and if so, whether or not, there is now to be found there all the papers in relation to it, which you saw at Monterey?

Ans.—I have examined within the last year very thoroughly for the correspondence of Gov. Figueroa, Gen. Vallejo and the Alcalde of San Francisco, and find the greater portion of that of 1834 and 1835 missing; the early part of the year 1834 is very complete.

Ques. 7.—Have you seen any documents in the office of the Alcalde of San Francisco, relating to her pueblo rights of land, and if so, state when and what?

Ans.—In February or March, 1850, I was employed by J. W. Geary, first Alcalde, to examine the archives in his office, and select out such papers as had reference to the title of the pueblo lands here for the use of the City Attorney, in a suit between it and Justice Colton; the examination of the archives was commenced but not finished, Colton having absconded; there was a large mass of Spanish documents; I should think a cart load; I recollect that we found documents in the form of letters of the Governors and authorities here, which were deemed sufficient to prove the establishment of a pueblo, and the control of the authorities over the municipal lands of the pueblo; among the papers, I then saw, were the papers now filed in this case, No. 1, 6, 9, 10, 11, 15, deposition (of) M. G. Vallejo, having read and marked them; I remember there were a great many other papers relating to it, letters, decrees, &c.; I recollect one paper which is not among these, being a letter from Governor Figueroa to the Alcalde, subsequent in date to document No. 1 above, with reference to the boundaries of the pueblo, which were to be fixed by the military authority; considered this as an important document leading to the discovery of others, among the military papers in relation to the boundaries of the pueblo; they prove the earliest foundation of the pueblo being filed; these papers were all left in the custody of the Alcalde, and the one mentioned was in date next in order to No. 1 as I recollect; the numbered papers were handed me in 1853, by Major Brenham; the letter of Figueroa recognized the pueblo, and said its boundaries would be marked out by the military authorities; my recollection of the contents of the letter is, that the boundaries of the pueblo would be marked out by the military authorities; I have since my examination in 1850, made a thorough examination for, and have been enabled to find the letter of Figueroa before spoken of; I do not know that it was all, but there was a large mass of military correspondence and documents in the Alcalde's office in 1850, No. 1 was found among the military and not the civil papers.

Ques. 8.—Do you know what became of the papers in the Alcalde's office, when it was abolished? Have you recently, within the last year, made search for them? And if so, what efforts have you made and with what success?

Ans.—The book of records were transferred to the County Recorder's office. The record of cases in litigation before the Alcalde, were transferred to the district and other state courts. But I never could find the great mass of the ——— documents, and know of no law making any disposition of them. Within the last year I have made search when I thought it likely they would be found, but without success. I have seen a paper in the hands of private individuals, which from their character, I believe was part of them; but these papers of little importance, not relating to the Pueblo title.

John W. Geary was the last Alcalde, he now resides in Pennsylvania; he left here in 1851.

Ques. 9.—State whether or not several fires have occurred in the city which destroyed, &c.

Ans.—Since I saw these records in the early part of 1850, several fires swept over the parts of the city in which the public offices were situated, destroying them; and I know that portions of the records of the courts were destroyed, among them the Mayor's office, &c.

Ques. 10.—State whether you had a conversation with William A. Richardson, whose deposition has been taken in this case in relation to a grant of lots to him near the Presidio; if so, state the whole conversation, and when it occurred.

Ans.—I arrived on the 13th of February, 1847, and on the same day in company with Captain Warner, under Gen. Kearney's orders, examined the fort at the point and the Presidio, with the intention to have them occupied with troops. Within a few days Thomas O. Larkin, or Leidesdorff, his agent, objected on the ground that it belonged to him under a grant to Benito Diaz. I was directed to make inquiries of some of the old inhabitants: I went to Mr. Richardson who was then Collector of the Port, he said the grant to Benito Diaz could not be good, because the land on which the Presidio was situated belonged to the pueblo of San Francisco: That it was the centre of the pueblo, that he had two lots near the Presidio, and others. He pointed out his at the time in front of the Presidio, we being in a boat at the time; on account of this information and some other obtained by Gen. Kearney it was determined to take and keep possession which was done, notwithstanding the claim of title.

(Objected to, because he had not been put on his guard by asking in relation to the conversation.)

Ques. 11.—What was the character of the documents you saw at Monterey, in relation to the pueblo of San Francisco?

Ans.—The correspondence was literally in this shape: The communication of the Alcalde was generally folded and endorsed, and in the

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inside the answer or reply was enclosed in it. Sometimes the reply was endorsed on the Alcalde's communication. This correspondence related to affairs in the place. Its general character was to communicate everything as it occurred here. The correspondence of the Alcalde ran through from 1835 until the taking possession by the United States. My recollection of the correspondence is that it dated indifferently pueblo of "Yerba Buena," and pueblo of "San Francisco."

Ques. 12.—Who were the Alcalde's communications signed by?

Ans.—De Haro, Hinckley, and others. There was a long correspondence contesting Hinckley's eligibility as not being a citizen.

Ques. 13.—How many communications did you see there which you can now identify?

Ans.—I think I must have seen a hundred, but of them I can only particularize by reference to their subject matter. There must have been five or six in relation to the Hinckley contest. There were three or four in relation to the troops at the Presidio taking charge of the civil prisoners. I remember a number from the Alcalde, say half a dozen, with reference to the holding the sessions at the Mission, instead of at the Presidio. The Governor at first refused, but afterwards consented, and probably fifteen or twenty communications in respect to elections. I do recollect reports of the receipts and expenditures of the municipal funds of the town.

Ques. 14.—Was the Presidio ever called the "Presidio of Yerba Buena?"

Ans.—I never heard it called the Presidio of "Yerba Buena" but of "San Francisco." The term "Yerba Buena" was generally applied to the place or landing, taking the name from a kind of mint growing there.

Ques. 15.—What is the distance from the Presidio to the landing of Yerba Buena?

Ans.—Two, or two and a half miles.

Ques. 16.—Do you recollect seeing any particular paper among the archives when the lines of a pueblo were spoken of?

Ans.—I recollect only one which was the Potrero Grant to Francesco and Ramon de Haro.

The within minutes of the deposition of Capt. Halleck is admitted to be read in evidence with the same effect as the original, the original having been mislaid or lost, it being understood that the claimant shall furnish a copy of the paper spoken of in relation to the Potrero.

May 13th, 1854. J. H. McKUNE, Law Agent.

DEPOSITION OF WM. A. RICHARDSON.

My name is Wm. A. Richardson; I was born in England, and now reside at Saucelito, Marin County, California; my age is 58 years; I have resided 31 years in California; during the first seven years, I

lived at the Presidio of San Francisco. I resided from the latter part of the year 1829, to the early part of 1835, at San Gabriel; from July 1835 to June 1841, I resided at Yerba Buena, and from that time until this date, I have resided at Saucelito, my present residence. I held under the Mexican government the office of Captain of the Port of San Francisco; I was first appointed to that office by General Figueroa in 1835, but did not receive my commission until January 1837; I held the office until the latter part of the year 1844; November or December, I think. When I came to reside at Yerba Buena there were no inhabitants there; there had been no lands or lots granted to any individuals at that time, to my knowledge. In the early part of the month of October 1835, I received a one hundred vara lot in Yerba Buena, situated in what is now Dupont street, on the south-west side of that street, on the north side of the Adelphi Theatre. There is a street called Pike street at the back end of the lot. I received it by order of the Territorial Deputation to the Alcalde of the Mission of San Francisco de Asis.

The paper purporting to be a letter addressed by Jose Castro to me, bearing date, October 20, 1835, marked exhibit No. 1, with the initial 'A. F.' was not received by me from Castro in person, but I received it from Don Francisco de Haro, the Alcalde.

I have often seen Jose Castro sign his name; this is his signature. The plan mentioned in the said letter, which I had formed for beginning the settlement at Yerba Buena, is one that I made by order of De Haro, the said Alcalde. The paper purporting to be a map, marked exhibit No. 2, with the initials 'A. F.,' is the original plan; a copy of it was sent to the Political Government, by order of the same Alcalde De Haro. I recommended the situation of the limits of the settlement or town of Yerba Buena to General Figueroa, while at the Mission of San Gabriel in May 1835; I recommended the cleared place for it. There was a plan of Yerba Buena made in 1839, but not by the government or the authorities. It was made by order of the people of the town, and under a survey made by Capt. Vioget. There was no other plan adopted by the authorities but the one here presented and marked exhibit No. 2.

There was no pueblo or town of San Francisco before July, 1846. When I came here in 1835, the Ayuntamiento of San Francisco held their meetings at the Mission of San Francisco Asis, and continued to hold them at that place until the war of 1846. When I first came here, the Ayuntamiento was chosen by a vote of the people. It consisted of an Alcalde, one Regidor, one Sindico Procurador, and one Juez de Campo, or Justice of the plains. I do not recollect how long these officers continued to be elected by votes. There were several changes and they were sometimes appointed by the Governor. I have looked at the document marked Doc. H. J. T., No. 18. I have never seen it before; I don't know the writing; it is a strange hand-writing

to me. I am well acquainted with the hand-writing of Zamorano; have been in the office with him, and have often seen him write and sign his name, and have had documents from him ever since 1828, until his death. The signature at the bottom of the last mentioned paper is not the signature of Zamorano. The words "Es copia conforme," immediately preceding the signature are not in his hand-writing. I never heard of a town called San Francisco, being laid off as represented in this document, nor of a grant to a town of that name. I have heard of a grant of land to a town or pueblo called Yerba Buena. In 1835, in the month of October, the Alcalde of the Mission of San Francisco de Asis, Don Francisco de Haro, received orders from the Political Government to lay off a small town at the Yerba Buena for the convenience of locating public offices at the port of San Francisco, for the convenience of the shipping, as the place called Yerba Buena was the general anchorage for shipping at that time. The same orders directed me to assist De Haro in doing it, and the orders also directed De Haro to give me a one hundred vara lot, and to reserve two hundred varas all along the beach for government buildings, and to make a plan of the place selected and measured off for the town. It was laid off as represented by the plan or map marked Exhibit No. 2, with the initials A. F., and the notes thereon. A copy of this plan was delivered to the magistrate De Haro; he requested me to keep the original in my possession. We had no compass at the time of the survey. The notes on the map have reference to the limits of the town as established by the magistrate. The limits established by the magistrate were as follows: They first measured off the two hundred varas from the beach, for the Government Reserve, in a south-west direction; then they measured off a certain distance to a place intended for a street, which they called "Calle de la Fundacion." I think this was two hundred varas from the Reserve. From this street they then measured off three hundred varas more in the same direction to the south-west; then from the south-east they commenced on the first sand-hill and measured in a north-west direction along the said "Calle de la Fundacion," four hundred varas, and there located my lot; it was the fifth one hundred vara lot. They then continued on the same line to the beach of the bay. The first sand-hill laid in a north-east and south-west direction; the north-east part terminating in the bay to the southward of a small lake which was on the beach; it run to the south-west and terminated three hundred varas from the parallel of the street above named. These boundaries of the pueblo of Yerba Buena were approved by the Territorial Government. I learned this by the letter which was read to me by the magistrate of San Francisco de Asis, when he delivered me the letter before mentioned and marked Exhibit No. 1. In the paper marked Doc. No. 2, purporting to be a certificate of the election of certain persons named therein as Electors for the Ayuntamiento of San Fran-

cisco, dated Dec. 7, 1834, I recognize three of the signatures thereon affixed, namely, Francisco de Haro, Francisco Sanchez and Joaquin Castro; the other I do not recognize. Ignacio Peralta, at the time of his election, lived at Rancho San Antonio in Contra Costa; Joaquin Castro and Antonio Castro lived at rancho San Pablo in Contra Costa, and Francisco Soto lived on his farm in Contra Costa near the Mission of San Jose. These persons were all connected by marriage with persons living at the Presidio of San Francisco and the Mission of San Francisco de Asis, and were frequently at these places—sometimes months together; but their permanent locations were as above stated. The father of Ignacio Peralta was living at the time, and resided at the Pueblo San Jose. I don't know whether the rancho on which Ignacio Peralta lived belonged to the father in person, or the father and family. I have known ranchos in California belonging to a father and his family; my rancho in Saucelito and several others; Saucelito was granted so by the Mexican Government. I have seen Ignacio Peralta in the Presidio of San Francisco, and in the Mission of San Francisco de Asis. He was a soldier when I came here in 1822, and for several years after. He did not reside here in 1835 or 1836. There were about twenty-five or thirty persons in the presidio in 1835 or 1836, but I do not believe there were over ten or twelve men. About the same number resided at that time at the mission of San Francisco de Asis, according to my best recollection. The distance from the Presidio to the Mission is little over three miles. I never knew of an Ayuntamiento sitting at the Presidio; when I came here in 1835 they were sitting at the Mission; they always sat at the Mission; sometimes they held no meetings for months together. I don't know if there was an Ayuntamiento in existence when the Americans took possession of this country in 1846. At that time I resided on my farm at Saucelito. Don Francisco de Haro was Alcalde of the Ayuntamiento in 1835, Joaquin Estudillo in 1836, Ignacio Martinez in 1837, De Haro, I think, in 1838; I don't recollect who in 1839. The names of the Alcaldes, between 1839 and 1846, are De Haro, Guerrero, Padillo, William Hinckley, Francisco Sanchez, Jose Jesus Noe, Jose de la Cruz Sanchez. I do not recollect any others.

The Ayuntamientos between 1835 and 1846 were composed of four persons, an Alcalde, a Regidor, a Sindico, and Juez de Campo. De Haro resided in the Mission most of the time, but a part of the time on his farm. Guerrero resided in the Mission; he had a rancho five or six leagues south from the Mission, but was very seldom on it. Pedillo resided in Yerba Buena; he had a rancho at Petaluma, and also, I believe, on Tomales Bay. Hinckley resided at Yerba Buena. Francisco Sanchez resided most of the time on his farm at San Pedro, about four and a half or five leagues south of the Mission. I never knew of his having a house at the Mission; he stayed with his relations when he was there. Most of those persons lived in the old buildings of the

Mission when they were at that place. Noe lived a part of the time at Yerba Buena, but he had a house at the Mission. Guerrero fitted up one of the old houses of the Mission and lived in it.

I don't know how the Ayuntamiento was formed in 1834, not being here. In 1835 it was formed by an election of the people. I don't know how it was conducted, not having assisted in it. I never assisted in any election of an Ayuntamiento before 1846. I never saw any voting for members of an Ayuntamiento here before 1846. I never saw any such voting at the Mission or at the Presidio before 1846. I never voted for a member of an Ayuntamiento. I have heard that such elections were held every year in the latter part of October or in November; sometimes as late as the latter part of December. The polls were open at the Mission; I have never heard of any other place but the Mission; I don't know who voted at those elections; I believe they were private people and soldiers, who came along mixed together. I have heard of cases of naturalized Indians voting. I don't know whether the right to vote depended upon the residence of the voters or not.

I have not the letter or copy of the letter directing De Haro to make the map here presented and marked "exhibit No. 2." I made that map in the early part of October, 1835. The copy I sent to the Governor, I made the same day. The paper on which the map is made, I got from the French ship Hero in the year 1828, or from a schooner called the Krymakoo which was here about the same time. I have some of the same kind of paper yet left, I think; I gave some of it to Capt. Vioget. The copy which was sent to the Governor, was on the same kind of paper; I have also made other copies on the same kind of paper and sent to the Governor; I never saw or heard of any copy being in the Governor's archives except on the receipt of the letter marked 'exhibit, No. 1,' with the initials 'A. F.' The map marked 'exhibit No. 3,' with the initials 'A. F.' has been in my possession since it was made in 1835. Several persons have seen it; I think Mr. Leese saw it soon after he came here in 1836. I do not recollect any others, but it was public, with my other papers and charts about my house. I had, I suppose, twenty or thirty different charts. The map has been inquired for frequently since 1846, particularly in the case of Mr. Bates, who took my testimony about three months ago.

Since the year 1846, I have resided at Saucelito; I have been some away from home; I have been up and down the coast several times, and once as far as the city of Mexico. I was at the city of Mexico in June 1852, and remained there about eleven days. I have been acquainted with the map of the village of Yerba Buena ever since it was laid off by me. I assisted in measuring and defining the line as laid down on the map. I could at any time since the map was made, describe from memory, those limits, and point out the natural objects included in those limits. I have pointed them out to persons since the

year 1846. I was very particular in pointing them out to Mr. Vioget, when he was altering the plan and making a survey of the place in 1839.

In 1843, when I sent a copy of this map to the Government, I pointed them out to several persons. I recollect that I pointed them out to a man called Jack the Soldier, Messrs. Rose and Reynolds, ship carpenters, Gregorio Escalante, a Manilla man, who, I think, lives at the Mission; there were several others whom I do not recollect. Messrs. Rose and Reynolds live in Napa. At the time of the war in 1846 or 1847, when Commodore Biddle was lying at Saucelito, in the Columbus, I spoke publicly, down in front of William Davis' house, which is now Montgomery street. I explained the limits of the town, where it came down to on the beach, and the whole limits round; as they were giving lots outside those limits, I opposed it, as I had applied for lots outside the limits of the town and never could obtain them, and it was contrary to Mexican law. A simple magistrate had no authority to do it. I applied for lots to Figueroa in his time, that is in the year 1834. In 1828, likewise, I applied to General Echandea, who was then Commandante General and Governor. I also applied to Alvarado, the Governor of California. This was about the year 1840 or 1841. The last time I applied was with the knowledge of John B. Cooper, of Monterey, who was to have part of it. My application in each case was rejected on account of the lands being occupied by the military post of the Presidio, for the convenience of their horses. The land located about half way between what is now called Clark's Point and Rincon Point, along the beach. I applied every time for the same piece of property. I also recollect making application to Don Luis Arguello, Governor of California in 1825, for the ground afterwards occupied for the site of Yerba Buena. The grant for the one hundred vara lot was made me by Don Francisco de Haro, the Alcalde of the Mission de San Francisco de Asis, by order of the political government. The document of that grant was lost, and I obtained another document for it in 1836, from Don Joaquin Estudillo, Alcalde of the same place. There were several grants made of lots in Yerba Buena, before 1846. Some were made by the magistrates residing at the Mission of San Francisco de Asis, and others by the different Governors of California.

By magistrates I mean the Alcaldes and Justices of the Peace. The Alcaldes were members of the Ayuntamientos. I never saw any of the Justices of the Peace acting with the Ayuntamientos. The Alcaldes who made these grants resided at different places; at the Mission of San Francisco de Asis, at Contra Conta, and at the settlement of Yerba Buena. I saw a hundred vara lot in Yerba Buena measured off by Ignacio Martinez, who resided at Contra Costa at that time, but was Alcalde of the Mission of San Francisco de Asis. This was in 1837. I don't know whether Contra Costa was a part of the land be-

longing to that Mission, but understood that it was under the jurisdiction of the civil authorities of the Mission of San Francisco de Asis. It was not in that jurisdiction continually, but was sometimes under the jurisdiction of the pueblo of San Jose.

I heard of people having lots at the Mission of San Francisco de Asis, but never saw any documents relating to them. I never heard from whom these grants were obtained. I did hear about Padre Santillan having sold lands, or given lots, but do not recollect at what time. The lots they were granting at the time I was complaining, were situated at the South East of the settlement of Yerba Buena, towards Rincon, at a place now called Happy Valley. I never had a conversation with any one when I was in the city of Mexico, about the limits of what is now claimed to be the pueblo of San Francisco. I had no conversation with any one about the limits of Yerba Buena. I saw Mr. Limantour in Mexico. He never asked me anything respecting the limits of San Francisco nor Yerba Buena. I went to Mexico on my own private business, respecting my lands. I have no property in San Francisco now; I have a piece of property north of the Presidio on a little plain, between the Presidio and the bay. It is one hundred and fifty varas square. I claim that property by a grant from Governor Arguello. I have no interest, direct or indirect to any lands or claims to lands in or near the present city of San Francisco, excepting my farm at Saucelito, where I reside. From November, 1834, to May, 1835, I resided at the Mission San Gabriel. In November and December, 1834, I was on the road from San Gabriel to Martinez' farm and at the Mission of San Francisco de Asis. I returned back to San Gabriel and arrived about the 21st or 22d of December. I left San Gabriel in the early part of May, 1835, with my family, in company with General Figueroa to remove to the Yerba Buena. I went to see my father-in-law, and arrived here with my family in the latter part of June, and pitched my tent here to await the orders of General Figueroa. Jacob P. Leese was the first settler who came here after me; he came and built his house on the 3d of July, 1836. His lot was adjoining the lot I had possession of to the south-east.

Gen. Figueroa told me he had seen a communication of mine to Gen. Echandea respecting the anchorage at Yerba Buena. He asked me if there was any spot sufficient to lay off a small village or town. I told him there was one abreast of the anchorage where the vessels lay, a small place. He asked me the extent, and wished me to give him a small sketch of it, which I did, stating the dimensions to the best of my knowledge of the clear spot. The sketch I made exhibited the land, and stated the extent to be about four hundred varas from the beach opposite the anchorage in a south-west direction; and the direction of the valley run about north-west and south-east about twelve hundred yards. I told him there were very few springs and it was very scarce of water. The land above described, as exhibited by the sketch was clear of bushes. The anchorage used by vessels enter-

ing the bay when I first came to the country was at the eastern side of the old fort, opposite the Presidio, and at the entrance of the bay. It continued there until December 1824, or the spring of 1825. From that time they came to anchor at the place called Yerba Buena. There had never been a captain of the Port here before. I was appointed in 1835. The Comandante of the Presidio acted as everything; there was no Captain of the Port. I do not recollect who was the Comandante in 1834 and 1835; it was sometimes a soldier. I was here in 1834, but did not see M. G. Vallejo here; I did not go to the Presidio. I was at the Presidio in 1833, and he was then residing there with his family, and was Comandante in 1834. I did not see him, but understood he was on his farm at Petaluma, and left a soldier or corporal in charge at the Presidio. This is the only time I was here in 1834. There might have been sixty or seventy inhabitants altogether in this city in July 1846. I do not know what time General Vallejo ceased in the command. It was customary for Comandantes to go away and leave others in charge for a time.

WM. J. RICHARDSON.

Political Government, ad interim, of Upper California:

This Government, conforming with the good desire of my predecessor, Senor General Don Jose Figueroa, regarding the foundation of a settlement in the place called "La Yerba Buena," and attending, likewise, to the statement made by you, in the name of the residents of the port of San Francisco, the welfare of which I sincerely desire, has approved the plan which you have formed for the commencement of said settlement; which, (while other matters are arranged, together with the system of civil authorities) will be borne in mind, in thecases of granting lots to the individuals who may solicit them.

All which I state to you for your satisfaction, thanking you for the services which gratuitously, you propose to do in favor of those residents.

God and Liberty,

Monterey, Oct. 20, 1835.

(Signed) JOSE CASTRO.

To Senor Don Guillermo Richardson,
Captain of the Port of San Francisco.

United States of America;
State of California. } S.S.

San Francisco, March 25, 1854.

This day personally came before Peter Lott, a commissioner for tak-

ing testimony to be used before the Board of U. S. Land Commissioners in said State, William A. Richardson, a witness on behalf of the United States, in case No. 280, on the docket of said Board, in which the city of San Francisco is claimant, and the said Wm. A. Richardson being duly sworn on oath, deposed in the English language as follows, to wit:

QUESTIONS BY U. S. LAW AGENT.

Question 1.—What is your name, age and present place of residence?

Answer.—My name is William A. Richardson; my age 58 years; my residence Marin county, California.

Ques. 2.—Where was reputed to be the boundary on the side towards the port of San Francisco of the Old Mission, and the so called Pueblo of San Francisco de Asis?

Ans.—Mission Creek was reputed to be the boundary.

Ques. 3.—Was the place called Yerba Buena or the plat formed in it for the concession of *Solares*, ever considered as embraced in the actual limits of said Mission or Pueblo of San Francisco de Asis?

Ans.—No it was not.

(This last question and and answer objected to by attorneys for claimants on substantial grounds, and not merely to the form.)

CROSS EXAMINATION BY ATTORNEYS FOR CLAIMANT.

Question 1.—What were the old limits of the Mission of San Francisco de Asis?

Ans.—I do not know what the southern and eastern limits were, but it never passed the creek towards the port.

Ques. 2.—Do you know what the western boundary of the Mission was?

Ans.—The coast of the Pacific.

Ques. 3.—What was the reputed extent of the Mission lands in leagues or square miles?

Ans.—It is hard to tell, to the best of my judgment I should say it would run about six leagues one way and about three the other; the three leagues would be in a direction from the Pacific coast to the bay, and the length would run about north-west and south-east.

Ques. 4.—Do the Mission buildings stand on the north or south side of Mission Creek? and how far from it.

Ans.—On the south side, a little over a half mile from the creek.

Ques. 5.—What was the north boundary of the mission lands west of the Mission buildings?

Ans.—It followed up the ravine of Mission Creek to a round hill called the Devisidero, there are two hills which were called by this name, the other is nearer the old fort, where the new Telegraph sta-

tion now is, the boundary continued from the round hill first mentioned to the Pacific coast.

Ques. 6.—State your means of knowing that Mission Creek formed the northern boundary of the mission lands?

Ans.—I know that the lands this side of the creek, on the north, were used by the horses and cattle of the Presidio, and there were frequent disputes about the boundary; I recollect when I first came, that there were Indian huts on the north side of this ravine, on a line from the Mission towards the north, about 400 or 500 yards distance; I think at that time the stream ran by those huts, but in the freshet of 1825 the sand hill was washed away, and that brought the stream nearer to the Mission buildings, where it now is; there formerly was a lake about 7 or 800 yards from those huts in a direction to the Pacific coast, where the spring use to head.

Ques. 7.—Was the place where those Indian huts stood known by any particular name, if so, what was it?

Ans.—I know of no particular name, except the "Rancheria."

Ques. 8.—Do you know a place called "Canutales?" and if so, is it to the north or south of the north line of the Mission lands, as you have now described that line, and how far distant from it?

Ans.—I do know all the little valleys north of that line go by that name, they are covered by a peculiar growth of a little weed something like a reed, with black rings around it.

Ques. 9.—Do you know the Spanish term by which Indians were known and designated at that time?

Ans.—Yes! Neophytes, they were the Christian Indians, the others were called Gentiles.

WM. A. RICHARDSON.

Subscribed and sworn to before me, on this 25th day of March, A. D., 1654.

PETER LOTT,
Commissioner for taking Testimony, &c.

Filed in office, March 25, 1851,

GEORGE FISHER, Secretary.

DEPOSITION OF JUAN B. ALVARADO.

My name is Juan B. Alvarado; age 44 years, and my place of residence is in the county of Contra Costa, in the State of California. I have resided in California ever since my birth. I will name in order, the offices I have held under the Mexican Government. I was first an officer in the Treasury, then Secretary of the Territorial Deputation, then Inspector in the Maritime Custom House at Monterey, then Deputy in the Territorial Deputation, then Governor *ad interim* of Cali-

fornia; also Colonel of the Militia of the Territory, Constitutional Governor of the Department of the two Californias, and Deputy from California to the General Congress of Mexico. I was a member of the Territorial Deputation all the year 1834, and some months of the year 1835. I recollect that at that time there were two Secretaries of the Political Chief, but I don't know when they changed; one was Augustin V. Zamorano, the other was Francisco Castillo Negrete. I am acquainted with the signatures of Jose Figueroa, Political Chief of the Territory at that time; I have seen him sign frequently; I have seen the paper marked "Doc. No. 1," purporting to be a dispatch from Jose Figueroa to the military commandant of San Francisco, and do not believe it to be the genuine signature of Figueroa in its totality, because I find a little difference in it, which might have been caused by the haste in which he might have signed many other dispatches at the same time.

I have seen the document marked "Doc. H. I. T. No. 18," purporting to be a copy of a dispatch from Jose Figueroa to Don Mariano G. Vallejo, Military Commandant of San Francisco; consider the words "Es copia conforme," and the signature Zamorano, and cannot justify the words nor the signature, because I do not find it exactly as he used to write it. I am not acquainted with the hand-writing of the body of the letter. I have seen the book marked on the outside cover "Libro Borrador, de Actas de la Exma Deputacion 1834 and 1835; sesions publicas;" and at the head of the first page, the words, "Sesion de 8 de Julio," and concluding on the last page with the signature of Manuel Jimeno. I consider this book as the genuine book that was kept by the Territorial Deputation as the Journal of their proceedings from July 8th, 1834, to October 16th, 1835. It appears that it commenced with July 8th, 1834, and concluded with the 16th of October, 1835. I recollect the circumstances connected with the establishment of the Ayuntamiento of San Francisco. It appears to me the Ayuntamiento was established by the authority of Figueroa.

Question.—Look at the paper now presented to you, marked "Doc. No. I, H. I. T." annexed to the deposition of M. G. Vallejo, filed in this case, and say whether you remember anything respecting the decree of the Territorial Deputation cited therein.

Answer.—I recollect that the Political Chief, Figueroa, with the Territorial Deputation, determined to establish an Ayuntamiento in San Francisco, and by virtue of this decree it was established.

Ques.—Do you know, or have you had reason to believe that any tract of land was ever assigned to a pueblo or town of San Francisco, by the Territorial Deputation, or the Departmental Junta, or Departmental Assembly, or any other competent authority in California?

Ans.—I do not recollect that there was any action in relation to the matter. I do not know whether any land was ever assigned as "propios" or "egidos" to the pueblo of San Francisco. I did not know

any pueblo in California called the pueblo of San Francisco, before July, 1846. I knew this place, where the city of San Francisco, now stands, before July, 1846, by the name of the pueblo da la Yerba Buena.

Ques.—Were any lands ever assigned to the pueblo of Yerba Buena as "propios," or "egidos," or "tierras comunes," or were any limits ever assigned to said pueblo prior to July, 1846?

Ans.—At one time some portion of land was designated to this town by the Political Chief; as regards the limits, I do not recollect of their having been fixed as a town. I recollect that the Ayuntamiento of San Francisco held their sessions sometimes in the Presidio of San Francisco, and sometimes at the Mission Dolores. There was a movement in the Ayuntamiento, and its place of meeting was not permanent; this I have heard stated but have not seen it. The Presidio may be one league, more or less, from the place where we now are; I cannot state positively. At the Presidio, in 1834, or about that time, there might have been forty persons, more or less, not including the soldiers. I think there was an Alcalde for the first time in 1834. I do not recollect the day or the month when the Ayuntamiento began to hold their sessions here but I believe it was in 1834; I cannot state when they ceased to hold their meetings there. There was no place known as the public plaza or square at the Presidio except the military plaza; it was situated in the Presidio itself; it was three hundred Spanish varas, more or less, on each side.

Ques.—By what authority, after the Mexican Independence, were municipal lands or egidos assigned to towns?

Ans.—I recollect a law given by the Cortez of Spain in 1813, which regulates the political economical government of the provinces beyond the seas. This law provides the manner in which the municipal lands shall be assigned to towns already established, or which may hereafter be established. I do not recollect any decree of the Congress or President of Mexico recognizing those laws as in force in California, but I am certain the said Spanish law was ordered by the Mexican Government to be observed by all the Governors within the territories of the Mexican Republic, and it was acted upon. I cannot tell when the sessions of the Ayuntamiento were held at the Mission. I stated before, that the Ayuntamiento was changing its place of holding its sessions from the Presidio to the Mission, and was sometimes held at the one place and sometimes at the other, but I cannot tell at what particular time it was held at each. I visited Yerba Buena and the Presidio for the first time in the year 1822; I lived in San Francisco in 1822 and 1823; I lived at the Presidio of San Francisco. I cannot tell exactly the date when the first inhabitants first settled on the site of the present city of San Francisco; it was subsequent to the year 1822. So far as I understood there were very few settlers at Yerba Buena in the year 1834 or 1835; from what I heard stated about that

time, there were not more than ten or twelve. I do not recollect whether I was at Yerba Buena at that time; I was there twice between the years 1835 and 1846, but I recollect only the time of the last visit, which was in 1846; there might have been from twenty to thirty houses at Yerba Buena previous to 1846.

Ques.—Look on the book here presented to you and marked on the cover "1840, Sesions Publicas," and closing with the signature of Manuel Jimeno Prenato and Jose Q. Fernandez Srio, and state what the book is, and what is the first communication contained in it.

Ans.—I know the book; it is the book of the Sessions of the Departmental Assembly; I have examined the first communication in it, and it contains the acts of the Assembly as therein stated. The recommendations contained in the first communication, came from me; I was then Governor of California. I do not recollect any law or authority in California for giving or measuring municipal lands to towns or pueblos, except the Spanish law, and authority existing previous to the declaration of Mexican Independence in 1821. The present town of San Francisco is within the ten coast leagues.

Ques.—Look at the paper here presented to you, being one enclosed among others in a paper cover, marked on the outside, "Comunicaciones al E. S. Gobernador," and state what the same is.

Ans.—I have seen and examined the paper, and state that it contains a petition to the Supreme Government upon subjects which at that time were thought necessary for the country.

Ques.—Look at the paper now presented to you, marked "No. 3," dated "Monterey, 8th April, 1840," and signed by Manuel Jimeno, and state whether it is part of the same proceedings, and whether you recognize the signature thereto as genuine.

Ans.—I recognize the document as containing a portion of the substance of the contents of the paper shown me before, and I recognize the signatures (names) of Manuel Jimeno and Jose C. Fernandez thereto, as the genuine signatures of those individuals.

Ques.—Did the Supreme Government of Mexico ever, to your knowledge, take any action on the subject of that petition in relation to the grants of Mission lands, or in relation to the grants of land within the ten littoral leagues, or as to the granting lands within the ten littoral leagues? If so, state what action.

Ans.—I do not know whether the Supreme Government of Mexico ever received the said petition, or whether it answered it; but I do now recollect of having seen a communication from the Minister of the Interior, of Mexico, addressed to General Micheltorena, and received by General Castro during the voyage of General Micheltorena to Mexico, in which mention is made of a grant made to Mr. Smith of Bodega, by Micheltorena, by which communication the Government approved the said grant made to Smith, but with orders not to make any such grants to any foreigner, and stating that if he did so, Govern-

ment would make him responsible for it. The above is the substance of said communication, although perhaps not in the same words. I believe this was in 1846; I am not very certain, but think it was in the latter part of 1845, or in the year 1846. My connection with the Government of California in an official capacity commenced in 1837 and closed in 1842. I was elected Deputy to the General Congress of Mexico in 1845 or 1846, I do not recollect which. The Governors of California from the year 1827 to 1846 were, first, General Jose Echandia; he was Governor from the year 1827 to 1830. General Manuel Victoria, from 1831. In 1832 there was no Governor. From 1833 to 1834, General Jose Figueroa was Governor. General Jose Castro in 1835; and during part of 1835 and 1836, and part of 1837 Mariano Chico and Nicholas Gautierez were Governors. I was Governor from 1837 to 1842; Micheltorena in 1843 and 1844. Pio Pico was the last Governor. Five or six claimed to be Governor in 1832, but nobody acted in that capacity. They all wanted to be Governor, including myself. I do not recollect the exact period when the Governors mentioned in my last answer succeeded each other. There were many changes and none of them served out the Constitutional terms. The pueblo of Yerba Buena was known by the people of the country by the name of Yerba Buena, but by persons who came by sea, it was called the port of San Francisco.

JUAN B. ALVARADO."

UNITED STATES OF AMERICA,
State of California. } SS.

San Francisco, March 23, 1854.

This day personally appeared before Peter Lott, a commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, Juan B. Alvarado, a witness on behalf of the United States, in case No. 280, on the docket of said Board, in which the city of San Francisco is claimant, the said Juan B. Alvarado being duly sworn, deposed in Spanish, which was interpreted then and there by the interpreter for said Board, into English, as follows, to wit:

U. S. Law Agent present.

QUESTIONS BY J. H. McKUNE.

Question 1.—What is your name, age and present place of residence?

Answer.—My name is Juan Bautista Alvarado; my age forty-five years, and my place of abode is the county of Contra Costa, California.

Ques. 2.—In your deposition given before Commissioner Felch, on the 12th day of August, 1853, in answer to question 20, therein, you say, "At one time some portion of land was assigned to the pueblo of Yerba Buena, as propios egidos or Tierras comunes, by the Political Chief." Please explain fully what you mean by that portion of that answer; what do you mean by there being a grant of land, and the facts referred to constituting what you call that assignment of lands to Yerba Buena; state fully the facts, within your knowledge, respecting the existence of the municipal organization called San Francisco de Asis, called the pueblo of that name, and the situation during the same time, of the place called Yerba Buena, and the relation which it occupied with respect to said Mission or pueblo, stating also the limits if any existed, of the said Mission or pueblo, on the side towards the port of San Francisco, and what localities were embraced in the place called Yerba Buena?

Ans.—In the year 1835, General Castro exercised the functions of Political Chief of the Territory, and senior member of the Territorial Deputation in consequence of the death of General Figueroa; he was Commanding General and Political Chief at the time of his death. I recollect that the Political Chief, Castro, in consideration of a solicitation of varions citizens of the Presidio of San Francisco, consented by giving an order that there should be given to them lots according to their petition; he gave an order declaring his consent that there might be granted lots. The Political Chief, Castro, declared his consent to the solicitation of several of the residents of the Presidio of San Francisco, to the effect that there might be granted by the Alcalde or Civil Judge of the residents of the Presidio and contiguous ranches, some lots in Yerba Buena, having present a diagram that embraced a certain portion of the land of the said Yerba Buena, remitted to said Political Chief by some person resident at this place, and according to my recollection of what the diagram represented, it would not be in extent more than a piece of land three hundred varas on each side, a little more or less, that is, calculating what the diagram or map might embrace. This is the same grant referred to by me in my former deposition, spoken of. I know of no other grant in this connection. I recollect that in the year 1835, there was established at the Presidio or Mission of San Francisco, some civil authority, but I cannot recollect whether there was an Ayuntamiento, San Francisco de Asis was the very anciently established mission as all the others of California. I recollect that in 1839 the said Mission of San Francisco de Asis was secularized, giving it the name of *pueblo*, the same as had been given to other Missions secularized prior to this, during the time of the government of General Figueroa. I cannot at this time recollect whether any boundaries were determined to this pueblo of San Francisco, but it was the residence of the municipal authority, as in the division of the department into districts and *partidos*, this place of San Franciseo de Asis

or Dolores, was called the capital of the partido, for the residence of a Sub-Prefect or Justice of the Peace. Respecting the locality of Yerba Buena, I have already said that there were no other limits assigned to it than those to which I referred in the varas of land (las varas do Terreno), a little more or less of the said diagram, with the exception of two hundred varas from the beach to the land, which the Government reserved for purposes that might be convenient. This is what I can at this time recollect in relation to the matter.

(This question and answer last written is objected to on the ground of its relating to matters that ought to be proved by documentary or record evidence.)

Ques. 3.—What part of the present city of San Francisco is situated on the former site of the port of Yerba Buena.

Ans.—There has never been recognized amongst us any port of Yerba Buena; there was a bay or anchorage called Yerba Buena. The portion of the bay lying in front of the present plaza, between Clay and Washington streets, was called the anchorage of Yerba Buena.

Ques. 4.—What was the northern limit of the pueblo of San Francisco de Asis?

Ans.—I do not recollect that any limits were assigned to the Mission before it was made a pueblo nor since. The Mission was large, though I do not know what boundaries were given to the pueblo.

Ques. 5.—Did any municipal organization ever exist during the time of the Mexican Government at the place called Yerba Buena?

Ans.—There was here, as in all other parts of the department, local authorities established at that time. Since 1839, when the department was divided into districts and *partidos*, the denominated Pueblo de San Francisco de Asis (or Dolores) was the residence of the local authorities, and previously when it was a Mission and not a pueblo, it was also the residence of the Alcaldes, or Ayuntamientos being denominated these authorities also of the Yerba Buena. I recollect no other municipal organization here at that time.

CROSS-EXAMINATION BY MR. PEACHY AS ATTORNEY FOR THE CITY OF SAN FRANCISCO.

Ques. 1—Please state if you know of any lots of land having been granted by any authority, during the existence of the Mexican Government in California, within the limits of the present city of San Francisco, if yea, by whom, and by what authority?

Ans.—I, according to my recollection, while Governor, made some grants within the limits here mentioned, since 1839. I may have made some before. The Alcaldes, Ayuntamientos, the Prefects and Sub-Prefects, each, according to the authorities they had from the Government, may have made grants of lots (solares). I know posi-

tively that the Alcaldes, Ayuntamientos, and Justices of the Peace, made some grants within those limits during that time; this might have been done before 1839; it is possible; they made such grants by the authority of the Governor of the Department or Territory.

Ques. 2.—From what source did the Governor derive his authority to delegate to Ayuntamientos, Alcaldes, and Justices of the Peace the power of granting lands?

Ans.—From the Colonization Laws themselves, which did not prohibit him from delegating this power when giving to the Governor that of making grants to families or particular individuals.

Ques. 3.—What Colonization Laws to you refer to?

Ans.—The law of August 1824, and the law of 1828; there may be another law referring to this subject, though I do not recollect certainly.

Ques. 4.—Was the power of the municipal authorities of all pueblos in California, to grant town lots, derived from the Governor of California?

Ans.—It was, but sometimes from the Prefect, who exercised all his functions subordinate to the Governor. Generally the local authorities made grants of lots (solares) in each pueblo, obtaining the power from the Governor, or some of his inferior authorities, as the case might be.

Ques. 5.—What was the size of the lots of land usually granted in the different pueblos to an individual?

Ans.—They were granted of different sizes to different individuals, in San Francisco of different sizes; I do not recollect the smallest size. There may have been in Yerba Buena concessions of lots of 200 varas; I do not recollect the shape and cannot say whether it was square varas or *varas square*, it was not customary to grant 50 vara lots, but at one time an order was given by the Governor to the Alcalde here, to grant no lots of larger size than 50 varas for a time.

JUAN B. ALVARADO.

Subscribed and sworn to before me on this 24th day of March, A. D., 1854.

PETER LOTT,
Commissioner for taking testimony.

BEFORE COMMISSIONER HILAND HALL.

My name is W. E. P. Hartnell; my age is fifty-four years; and I reside in Monterey.

Question.—Examine the paper, marked H. T. S., No. 18, attached to the deposition of M. G. Vallejo, heretofore taken in this case, and say, if you recognize the hand-writing in which the body of the paper is written?

Answer.—I do not. I think the signature of Zamorana, affixed to the paper, a very suspicious one at best, and I do not believe it to be his hand-writing. W. E. P. HARTNELL.

UNITED STATES OF AMERICA, *State of California.* } SS.

San Francisco, May 10, 1854.

This day, personally came before Peter Lott, a commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, Francisco Sanchez, a witness in behalf of the United States, in case No. 280, on the docket of said board, wherein the city of San Francisco is claimant, and the said witness being duly sworn, on oath deposed in the Spanish language, which interpreted into English by the interpreter to said board as follows, to wit:

The attorneys for the claimant are present.

QUESTIONS BY U. S. LAW AGENT.

Question 1.—What is your name, age and place of residence?

Answer.—My name is Francisco Sanchez, my age forty-eight years, my residence San Francisco county, California.

Ques. 2.—How long have you resided there, and what offices have you held under the Mexican Government?

Ans.—I have lived in what is now called San Francisco county since I was a small boy; I was born at the Mission of San Jose; I was first municipal elector for choosing members to the Departmental Assembly at Monterey, that was in 1836. In 1835 and 1836 I was Secretary to the Ayuntamiento of San Francisco. From 1837 to 1840 I was military commandant of San Francisco at the Presidio. In 1842 and 1843 I was Justice of the Peace of San Francisco; that is all the offices I have held.

Ques. 3.—Look at the marked "Doc. No. 3," H. J. T., annexed to the deposition of M. G. Vallejo, heretofore taken in this case, and state if you know the location of the place therein called the Pueblo of San Francisco de Asis, and the plaza of said pueblo therein mentioned?

Ans.—The election spoken of in the document, was held at the presidio, and the place here called the pueblo was at the presidio, afterwards it was at the Mission Dolores. The plaza in this document referred to is the plaza at the presidio. There was no pueblo there at that time, though they called it so in the document.

Ques. 4.—Look at document marked "Doc. No. 2, H. J. T., annexed

to the deposition of M. G. Vallejo, taken before Commissioner Harry J. Thornton," and say whether there was ever more than one election at the presidio; if any, state whether this document relates to that election?

Ans.—This paper relates to the first election held at the presidio, it was held at the house of the commandant of the presidio, at the time when the Ayuntamiento was established. The other paper (Doc. No. 3) relates to a second election held at the same place, to elect the new officers of the Ayuntamiento.

Ques. 5.—Where did Bartolo Boyerguez reside at the time of the first election of which you speak?

Ans.—He lived with his family at the presidio of San Francisco; he lived there a long time before that and afterwards; he was there in 1837.

Ques. 6.—Explain why the presidio was discribed in Doc. No. 3, as a pueblo, when it was not a pueblo, as you have stated in your answer to third question; and state where the pueblo was afterwards located.

Ans.—As it was an election held by the people (pueblo) assembled to elect their representatives, the name of pueblo was given to it by the president of the municipal meeting or assembly of the people (pueblo) to elect their representatives. In 1837 the pueblo was moved to the Mission Dolores, in consequence of the Mission Dolores having been made the capital (cabezera) of this district, by Governor Alvarado.

Ques. 7.—Look at documents No.'s 5, 7, 8, 13, 14, and 16, annexed to said deposition of M. G. Vallejo, and say if you know where is the locality of the place referred to in the address, or otherwise in said documents called San Francisco de Asis and San Francisco.

(Objected to by attorney for claimants, on the ground that it called for the construction of written documents, and not for facts, P. L.)

Ans.—In the address in Doc. No. 5, San Francisco de Asis refers to the Mission Dolores. In Doc. No. 7, San Francisco de Asis refers to the Mission Dolores. In Doc. No. 8, Pueblo de San Francisco de Asis refers to the locality of the Mission Dolores, the document was written there. In Doc. No. 13, San Francisco refers to the same place. In Doc. No. 14, San Francisco refers to the locality of Mission Dolores. In Doc. No. 16, San Francisco refers to the same locality of the Mission Dolores. At the time of the last document No. 16, the court was held here where San Francisco now is, because Hinckley had changed it.

Ques. 8.—What office did Hinckley hold, and during what period and how did he get such office?

Ans.—He was Justice of the Peace from January, 1844, to January, 1845; he was appointed by the Governor of the Department.

Ques. 9.—What was the territorial extent of his jurisdiction?

Ans.—From the arroyo of San Francisquito to the port of San

Francisco. The place called Pulgas ranch was embraced in what was the jurisdiction of said Justice of the Peace.

Ques. 10.—Where did Jose de la Cruz Sanchez, Felipe Briones, Gabriel Castro, Manuel Sanchez, Francisco Sanchez, Ygnacio Peralto, Joaquin Estudillo, and Candellario Valencia, reside at the time the elections were held at the Presidio of San Francisco.

Ans.—At that time Jose de la Cruz Sanchez lived at the Presidio; Gabriel Castro, Manuel Sanchez, Francisco Sanchez, and Joaquin Estudillo at the same place; Felipe Briones lived at the rancho de Pinone, in Contra Costa; Ygnacio Peralta lived at the rancho of San Antcnio, in Contra Costa; Candellario Valencia lived at the Presidio also.

Ques. 11.—How long did they respectively live at those places after that time?

Ans.—After the Ayuntamiento was established at the Mission; some of them moved there and some to ranches, but I do not know when each one moved.

Ques. 12.—State about how many voters attended each of the elections at the Presidio, and from what parts of the country did they come there to vote?

Ans.—I do not know how many voters attended those elections. They came from Contra Costa, Sonoma, San Rafael, and other places embraced in the jurisdiction. The voters were anxious to come to the election, and spared no exertion to do so, as they were anxious to get rid of the military authority.

Ques. 13.—Did you know Francisco Guerrero in his life time; if yea, what office did he hold; where did he and his family reside, and where did he keep his records and office?

Ans.—I knew him from 1833 till he died. From 1839 till 1841 he was Justice of the Peace at the Mission Dolores, and lived with his family, and had his office and records there. I think in 1845 he was Sub-Prefect, and had his office at the Mission. His records and archives were there at that time.

Ques. 14.—While you were military commandant in 1845, was the petition of Benito Diaz for a tract of land known by the name of Point Lobos, bounded on the north by the sea, which runs into the port of San Francisco, on the south by the ridge of hills at the rear of the Mission of San Francisco, known as the hills of the Deep Lake (La guna Hinda), on the east by the high ground, and on the west by Point Lobos, referred to you for report; if yea, state whether at that time you reported the same to be public lands of the nation, and whether in fact it was public land at the time?

Ans.—Yes; in 1845 while I was military commandant such a petition was referred to me, by the Governor, to report whether the land was vacant (valdio). I made report that it was embraced within the lands belonging to the military post, as the Governor had asked for

that information in referring the petition to me. It was not in fact vacant (valdio) as it was occupied by the military works and used for that purpose. It belonged to the Government.

Ques. 15.—In what direction and how far from the Presidio was that land?

Ans.—The Presidio is on the land which was petitioned for in that petition.

Ques. 16.—State, if you know, whether the municipal or other authorities, or the citizens of said Mission, or so called pueblo, or any other pueblo or town, previous to the American occupation of the country, ever exercised any acts of ownership over, or laid claim to any lands whatever, in the present county of San Francisco, as lands of the property of the town; and if the said town, or any other town within the Territory embraced by the present county of San Francisco was ever reputed to be the owner of, or have any right to, any lands whatever; and if yea, explain what lands, and by what right they were held or claimed.

Ans.—The pueblo at the Mission Dolores pretended to own the lands immediately about the Mission which did not belong to any individual, such were recognized as the lands of the pueblo. So far as relates to acts of ownership, I never saw any acts of measurement. The pueblo never made any; I never saw lands measured by surveyors till the Americans came here, nor were any enclosures made by the pueblo as such. I never knew a pueblo in California to enclose its lands. I do not know by what right they claimed the lands, but the pueblo solicited the Governor to establish its settlement (poblaciori) at the Mission Dolores, in the pueblo of San Francisco de Asis, and the Governor established as *cabezera* (capital) of the district of the pueblo of San Francisco de Asis at the establishment of Dolores; that is all I know about the right by which they claimed. The court of the Justice of the Peace was there, and the Justice of the Peace gave various lots to individuals to build houses and live on.

Ques. 17.—Did the Justice of the Peace give such lots by order of the Government?

Ans.—He did; of fifty vara lots.

Ques. 18.—Did the Governor himself make grants of lots in the pueblo?

Ans.—He granted lots which were more than fifty varas, as the Justice of the Peace only had authority to give fifty vara lots; when they were larger than fifty varas, the application had to be made to the Governor, who by a marginal order on the petition directed the Justice to give the applicant the lots so petitioned for. The Governor gave orders that the Justice should not grant lots of more than fifty varas each, without application was made to the Governor and received his sanction. I made grants myself as Justice of the Peace here in Yerba Buena, while I was acting in that office at Dolores.

The Justices had the authority to grant lots both here in Yerba Buena and at the Mission, it was all within their jurisdiction.

CROSS-EXAMINED BY ATTORNEYS FOR CLAIMANT.

Ques. 1.—Look at the Document No 2, H. I. T., annexed to Deposition of M. G. Vallejo, taken in this case, and say if the name Francisco Sanchez, therein written is your name, and you are the same person therein referred to as one of the *Junta primaria de los electores*, and an election of an Ayuntamiento was made by the said *Junta;* if yea, when and where was the said Ayuntamiento installed?

Ans.—I am the same individual referred to in document as Francisco Sanchez; that is my name. I was member of the *Junta Primaria* referred to, and acted as secretary of the same. That *Junta*, on the first Sunday in December, 1834, elected electors of whom I was one, for the purpose of choosing the Ayuntamiento. The Ayuntamiento was chosen on the third Sunday of the same month. The Ayuntamiento was installed Jan. 1, 1835. These meetings, elections and installations all took place at the Presidio. The oath of office was administered by the Alcalde, Francisco de Haro, by M. G. Vallejo, who was the military comandante, and the said Alcalde administered the oath to the others.

Ques. 2.—Answer the same questions respecting documents No. 3, annexed to deposition of M. G. Vallejo, taken in this case.

Ans.—In December 1853, the primary Junta chose electors, and they chose an Ayuntamiento as before at the Presidio of San Francisco, and I am the same person also named in this document as secretary, and this is a genuine document. The second Ayuntamiento went into office Jan. 1st, 1836.

Ques. 3.—Where did the next or third election for an Ayuntamiento take place?

Ans.—At the same place at the Presidio, and the election of the Primaria Junta of that year, 1836, for the choice of electors for the Ayuntamiento of 1837 also took place at the Presidio.

Ques. 4.—Where did the Ayuntamiento of 1837 hold its sittings?

Ans.—Chiefly through that year they sat at the Presidio, but towards the close of that year they moved to the Mission Dolores.

Ques. 5.—Why was the Ayuntamiento moved to the Mission?

Ans.—As the Governor established the capital (cabezera) of the partido or district of San Francisco at the Mission of Dolores, the Ayuntamiento was moved to that place, and because the Presidio being a military post the pueblo could not be established there.

Ques. 6.—In what year did the Governor make the Mission the *Cabezera* of the partido or district of San Francisco?

Ans.—I do not recollect. The Governor Alvarado is here and knows.

Ques. 7.—How did you know that the Mission was made the capital of the district?

Ans.—I saw the order; it was published and was in the archives.

Ques. 8.—How long after that order was issued did the removal of the Ayuntamiento take place?

Ans.—I do not recollect.

Ques. 9.—Do you recollect whether, in the order of Gov. Alvarado establishing the Mission as the capital of the district of San Francisco, you saw any order, establishing the capital of any other district or partido?

Ans.—There was, in the same order, an order establishing San Juan Bautista as a cabezera of that district. I do not recollect of any other in that order.

Ques. 10.—Look at Document No. 6, annexed to M. G. Vallejo's deposition in this case, and say what locality is referred to in the address on said documents?

Ans.—At the time of the date of this document the Alcalde was at the Presidio, and Don Jose Castro will know what place the address refers to.

Ques. 11.—Who was the constitutional Alcalde of San Francisco de Asis, in 1835?

Ans.—Don Francisco de Haro was.

Ques. 12.—Was said Francisco de Haro a member of the Ayuntamiento which had its sessions at the Presidio in 1835?

Ans.—He was the Alcalde and presided over that Ayuntamiento.

Ques. 13.—Was there any Ayuntamiento at the Mission of San Francisco, in the years 1834, 1835 and 1836?

Ans.—In 1834 there was no Ayuntamiento any where about here, and in 1835 and 1836 it was not at the Mission, but at the Presidio; there was none at the Mission in those years.

Ques. 14.—How many, and what years was there an Ayuntamiento held at the Mission Dolores?

Ans.—In 1838 it held its sessions there, and in 1839 there ceased to be an Ayuntamiento, as the Governor established a Justice of the Peace. There was no Ayuntamiento at the Mission in any other years.

Ques. 15.—Give the names of the Justices of the Peace who succeeded the Ayuntamiento, after it was superseded by the Governor.

Ans.—Don Francisco Guerrero, in May, 1839, I think, entered upon the duties of Justice of the Peace. It seems to me there was a (Suplente,) or 2d Justice, Vicente Maramontes, though I am not certain.

Ques. 16.—Do you remember the names of the Justices of the Peace in 1840?

Ans.—The same Francisco Guerrero continued till 1841. I was Justice of the Peace in 1842 and 1843, and Jesus Noe was my (Segundo,) or second Justice.

Ques. 17.—Who were the Justices of the Peace, after 1843?

Ans.—William Hinckley was Justice in 1844. I do not recollect his (Segundo); in 1845, Juan Nepomoceno Padilla, his second was Jose de la Cruz Sanchez; said Padilla was a Justice of the Peace; there were no Alcaldes at that time, and he was not Alcalde.. Padilla was appointed by the Governor, as were all the others. In 1846, Jesus Noe was Justice, till July 9th. I do not recollect his segundo, though I think it was Ridley. FRANCISCO SANCHEZ.

Subscribed and sworn to before me, on this 11th day of May, A. D., 1854. PETER LOTT,
Commissioner for taking Testimony, &c.

BEFORE COMMISSIONER LOTT.

Jose Castro deposed that he is 45 years of age, and reside in Monterey. In 1835, I was Political Chief of California, as senior member Territorial Deputation from the year 1836 to 1846. In the last mentioned year, 1846, I was Commandant General of California. Before 1835, in the year 1834, in October and November, I was senior member (Primer Vocal) of the Territorial Deputation; I was well acquainted with Zamarano, former Secretary of Governor Figueroa, and very familar with his hand-writing. I was in the same office with him one year, and wrote at the same table. I have often seen him write, have received many letters from him, and know his hand-writing well. On being asked to look at Doc. marked H. I. T. No. 18, annexed to the deposition of M. G. Vallejo, heretofore taken and filed in this case, and say whether the name "Zamarano" thereon written is his genuine signature, he says, no it is not his signature, the rubrica is more imperfect than the name is; according to my judgment it is not his. The words "es copia conforme," written on this same paper above his name, is not his hand-writing; I do not know the hand-writing of the body of said document; I can say that Gov. Figueroa never had a clerk in his office, according to the best of my judgment, who wrote a hand-writing such as this. I recollect the session of the Territorial Deputation of California during the months of October and November, 1834; I was first Vocal (President) of the Deputation. On being requested to examine the said document No. 18, and say whether the subject matter mentioned therein was brought before the Territorial Deputation, or acted upon by that body between the 24th of October, 1834, and the 4th of November of the same year, he says no such plan as this was ever presented to the Deputation; I have examimed the Documents carefully and understand its contents fully.

The subject matter itself was never presented to, nor acted upon by the said Deputation. On looking at Document No. 3, annexed to the

Deposition of M. G. Vallejo, he says, according to my understanding of this paper, the place therein called "San Francisco de Asis," is the same as the Mission of Dolores. And the plaza mentioned was in the Mission to the west of the church, and also in front of it. There was no other place in the vicinity of the Mission of Dolores, or of the present site of the city of San Francisco, called "San Francisco de Asis," or any other place called the plaza, at the time this paper bears date. On examining Documents Nos. 5, 6, 7, 8, 13, 14, 16, he says, according to my understanding, the name "San Francisco de Asis," and "San Francisco," whenever they occur therein, refers to the place known as the Mission of Dolores.

Examination Continued, April 4, 1854.

On looking at Exhibit No. 1, annexed to Deposition of William A. Richardson, he says his name hereto signed, is his genuine signature. I wrote it with my own hand: I was then acting in the capacity of Political Chief (Gefe Politico).

CROSS-EXAMINED BY MR. PEACHY FOR CLAIMANT.

He says, I do not recollect how often the Territorial Deputation met between the years 1830 and 1840; they met at Monterey; I do not recollect whether there was a meeting of the deputation in 1833; I do not recollect whether there was one in 1835; I recollect that there was a meeting of the deputation in the latter part of the year 1834. On being requested to name the years between 1830 and 1840, when he knows that the Territorial Deputation assembled, he says: I cannot recollect; it might be twenty times, and I will not pretend to say as I cannot remember; between 1830 and 1840 I lived at various points in different parts of the country; I was at Los Angeles, Santa Barbara, San Juan Bautista and Monterey and out of this country in Mexico and in all parts of the country in different commissions from the Government of the country; I was about four months, below this on the bay trapping beaver; I was at Vallejo's head quarters; that was about a league and a half in a westerly direction from this place a little below the old castle near the sea; there was a square out there called the comandancia, where there was a house called the Presidio: when I was there I think it was in 1830, I am not certain; that was the only time that I was at that particular place; I was during that time (between 1830 and 1840) here and at the Mission of Dolores; these are the times that I recollect (of being here and at the Mission Dolores;) there might have been others; I do not recollect how long a time I spent here; it was a few days; I do not recollect the number; I do not recollect how long Vallejo commanded at the Presidio, nor when he took command, nor the year when he left the command, nor who succeeded him, nor whether any one succeeded him. The

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Presidio was called the Presidio of our Father San Francisco. (El Presidio de Nuestro Padre San Francisco.) All the Priests called it so. I know it from them. I was once a member of the Territorial Deputation for 4 years. I think it was 1832, 1834 and 1835. I do not recollect how many sessions were held while I was a member, perhaps there were two sessions of several months; there might have been more. I do not recollect when those sessions were held. They were held in the latter months of 1834 and the early month of 1835. I recollect the session in the year before, but I do not recollect the sittings. I do not remember the number of members of the Territorial Deputation, Juan B. Alvarado, Carlos Carrillo, Jose Antonio Corre, and Pio Pico, and Joaquin Ortega.

On being asked if he was present every day of every session when the Territorial Deputation sat, he says I was always present; I was young and healthy at that time; I was always in attendance at the acts (acuerdos) of the Deputation. There might have been a day when I was not there. I, as Vocal, received the Reports of the Committees and the Communications from the Governor. I think I was first Vocal two years, 1834 and 1835. On being asked if he can recollect any of the business transacted by the Deputation while he was *first* Vocal, he says I cannot recollect; it would require more time for me to state exactly what I might recollect; if I could have a day or two I could write what was done. I cannot now recollect any of the proceedings. The Doc. marked Ex. No. 1 was written by Alvarado; (he did not say it was *written by* Alvarado, but it is in the hand-writing of Alvarado.)

On being requested by U. S. Law Agent to look at Doc. A, B, C, and D, P, L filed in this case, and say whether he recollects any of the proceedings mentioned in Doc. "B," P, L, and is enabled to refresh his memory of the proceedings about that time, and the first five pages of the Doc. marked B, being read to him at his request, because his sight was defective, he then answered, I recollect all the proceedings as read to me; I was a member of the Deputation during all that session, when these proceedings were had, and minutes were kept in a book of all the proceedings of the Deputation, and that ought to be in the archives.

JOSE CASTRO.

UNITED STATES OF AMERICA,
State of California. } ss.

San Francisco, May 10, 1854.

This day, personally came before Peter Lott, a Commissioner for taking testimony to be used before the Board of U. S. Land Commis-

sioners in said State, Charles Brown, a witness on behalf of the United States, in case No. 280, on the docket of said Board, wherein the city of San Francisco is claimant' and the said witness being duly sworn, on oath deposed in the English language, as follows, " to wit :"

The Attorneys for the City, Mr. Peachy and others, are present.

QUESTIONS BY THE U. S. LAW AGENT.

Question 1.—What is your name, age and present residence ?

Answer.—My name is Charles Brown ; my age is 39 years ; my residence Mission Dolores, San Francisco County, California.

Ques. 2.—Where have you resided during the last 20 years ?

Ans.—In the County of San Francisco, California ; I lived about 14 years on my farm in the red woods, where Col. Jack Hayes now claims, and the balance of the time at the Mission.

Ques. 3.—Look at the paper marked Doc. No. 3, H. I, T, annexed to the deposition of M. G. Vallejo, heretofore taken in this case, and state if you know the location of the place therein, called the *Pueblo of San Francisco de Asis*, and the plaza of said pueblo therein mentioned.

Ans.—I have looked at the papers, and I do know the location of the place called the Pueblo of San Francisco de Asis, it was what is now called the Mission of Dolores and the plaza therein was just in front of the old adobe buildings, and the church about where the corner of Dolores and Centre street is.

Ques. 4.—Was there any other place in the vicinity of the said Mission of San Francisco, or of the present site of the city of San Francisco, called San Francisco de Asis, at any time before the American occupation of the country, or any other place which, at the date of this document, was called the plaza of said pueblo ?

Ans.—The document is dated Nov. 10th, 1835, and at that time there was no other place called the plaza of said pueblo ; nor was there ever, within my knowledge, any other place in the vicinity called San Francisco de Asis.

(Objected to by counsel for city, Gen. Williams, on the ground that it calls for the construction of written instruments, not facts. P. L.)

Ques. 5.—Look at Documents No. 5, 7, 8, 13, 14 and 16, annexed to said deposition of M. G. Vallejo, and say if you know where is the locality of the place referred to therein, the address or otherwise in said documents called San Francisco de Asis and San Francisco ?

Ans.—It is Dolores as it is now called, and there was no other place called by those names.

Ques. 6.—State if you know what were reputed to be the boundaries on the side towards the port of San Francisco of the said Mission and so called pueblo of San Francisco ?

Ans.—I always understood the boundary on that side of the Mission to be the Mission creek, and running thence straight across to Point Lobos.

Ques. 7.—State if your residence was within the jurisdiction of the authorities of said Mission and so called pueblo, and if you were or were not a voter, and if you were, at what place you voted.

Ans.—I did live within the jurisdiction of the said authorities; I was a voter and voted at Dolores and at no other place; I knew of no elections held anywhere else within said jurisdiction.

Ques. 8.—State by what name the place this side said line of the Mission referred to by you in answer to the sixth interrogatory and lying on the port of San Francisco was known and called previous to the American occupation of the country.

Ans.—It was known as Yerba Buena.

Ques. 9.—State if you know whether the municipal or other authorities, or the citizens of said Mission or so called pueblo, or any other pueblo or town previous to the date referred to in the last question, ever exercised any acts of ownership over, or laid claim to any lands whatever, in the present county of San Francisco, as lands of the property of the town, or if the said town or any other town within the territory embraced by the present county of San Francisco was ever reputed to be the owner of or have any right to any lands whatever, and if yea, explain what lands and by what right they were held or claimed.

Ans.—I know of no authority ever exercised over any lands or any claims being made to any land in the county by said pueblo, or any other as owner of such lands, nor by citizens as claiming to hold under such ownership; all I know about it is that the place now called Dolores, was called San Francisco de Asis, and I never heard of their owning any lands, or claiming to own any as a pueblo. I have lived for the last twenty years within what is now the county of San Francisco, and within what was the jurisdiction of the Mission Dolores, or San Francisco de Asis.

CROSS-EXAMINED BY ATTORNEYS FOR CLAIMANTS.

Question 1.—Were you a naturalized citizen of Mexico; if yea, when did you become such?

Answer.—I was, and I think I became so naturalized about 1838.

Ques. 2.—Did you ever hold any public office in California?

Ans.—No.

Ques. 3.—Did you ever live at the presidio?

Ans.—No I never did.

Ques. 4.—Did you ever live at the Mission Dolores?

Ans.—Yes, I live there now and have lived there this last time four years.

Ques. 5.—What was your occupation during the twenty years of your residence in California?

Ans.—I sawed lumber and made shingles in the red woods, and have been ranching and had stock.

Ques. 6.—Where did you live in 1833, 1834, 1835, and 1836?

Ans.—In 1833 and part of 1834, I lived between this place and the presidio, at a spring called "Ojita Figueroa;" from that to 1835 I was in Sonoma and Napa Valley; I was after that a few months at pueblo of San Jose, and from that time to the present in this county; when I returned to this county from San Jose, I do not recollect exactly where I first lived; I was part of the time at the Mission, and here and at my place in the red woods.

Ques. 7.—Did you ever attend an election of members to the Ayuntamiento?

Ans.—I do not recollect that I ever did; I might have done so.

Ques. 8.—Do you or not own any land in the county of San Francisco?

Ans.—I claim to own some.

Ques. 9.—Where is it?

Ans.—I own some on the Sanchez rancho, called Buriburi; that is all I own. My wife has some at the Lake House, part of the De Haro estate, of the Rancho La Laguna de Merced and some lots at the Mission Dolores. I do not know by whom the lots were granted. They were granted to San Francisco de Haro.

RE-EXAMINED BY U. S. LAW AGENT.

Ques. 1.—Did you know Francisco Guerrero in his life time; if yes, what was his business and his character, and where did he reside?

Ans.—I knew him well; he lived at the Mission Dolores. He was always in office, either Alcalde or Sub-prefect or sometoing of that sort. I knew him from about 1835 till he died, all of which time he lived at the Mission Dolores. He went sometimes to his farm on the coast, but always had his home at the Mission.

Ques. 2.—Did he ever keep his office during that time at any other place than the Mission?

Ans.—He never did at any other place.

Ques. 3.—Are you acquainted with Francisco Sanchez,? how long have you known him? what office has he held? where has he resided and where did he keep his office?

Ans.—I know him; he was a long time Alcalde at the Mission Dolores, and also at one time Alcalde's clerk; he was Captain of the Port of Yerba Buena. I have known him some twenty years or upwards. He kept his Alcalde's office and his Secretary's office at the Mission Dolores.

Ques. 4.—Answer the same questions as to Jose de la Cruz Sanchez?

Ans.—I have known him about the same time that I have known his brother Francisco last named; he was once Alcalde of the Mission and lived and had his office at Dolores; he afterwards moved to his farm in this county. I do not think that he ever lived at Yerba Buena.

Ques. 5.—Answer the same questions respecting Don Jesus Noe.

Ans.—I have known him since about 1835. He was Alcalde at the Mission Dolores; he lived and had his office in what is now San Francisco, back of Dupont street, back of where the Monumental Engine house now is; I do not recollect the year he was Alcalde; he was the last Alcalde before the war; I think he was elected. I was at that time at my farm and do not remember.

Ques. 6.—Answer the same questions respecting Francisco de Haro.

Ans.—I knew him; he was my father-in-law; I first knew him about 1832 or 1833, and till about 1847; he was Alcalde and also Alcalde's Secretary at the Mission Dolores; he lived and kept his office at Mission Dolores.

Ques. 7.—Did the several officers you have named exercise jurisdiction over the country here, irrespective of any pueblo, extending that jurisdiction as far as Contra Costa and the Pulgas Rancho?

Ans.—I know that they exercised jurisdiction here; but I do not know the territorial limit of that jurisdiction; I do not know whether it was limited by any pueblo or town, or not.

CROSS-EXAMINED AGAIN BY ATTORNEYS FOR CLAIMANT.

Ques. 1.—During the time of which you have been speaking, did you take any particular interest in the administration of public affairs at this place, or know much about them?

Ans.—I took but little interest in such matters: I knew only what was publicly known who the officers were, and the like, but took no particular interest or part in such things.

CHARLES BROWN.

Subscribed and sworn to before me, this 10th day of May, A. D., 1854.

PETER LOTT,
Commissioner for taking testimony, &c.

UNITED STATES OF AMERICA,
State of California. } ss.

SAN FRANCISCO, May 11th, 1845.

This day personally came before Peter Lott, a Commissioner for taking testimony to be used before the Board of U. S. Land Commis-

sioners, in said State, Jacob P. Leese, a witness on behalf of the United States in case No. 280 on the docket of said Board, wherein the city of San Francisco is claimant, and the said witness being duly sworn on oath deposed in the English language as follows, to wit:

The attorneys for claimant are present.

QUESTIONS BY U. S. LAW AGENT.

Ques. 1.—What is your name, age, and residence?

Ans.—My name is Jacob P. Leese, my age 45 years, my residence Monterey, California.

Ques. 2.—How long have you lived in California?

Ans.—I have lived here since the year 1833. From 1836 to 1841, I lived at Yerba Buena, from that time till 1848, in Sonoma, since that in Monterey. I was frequently visiting Yerba Buena while I lived at Sonoma.

Ques. 3.—Who built and inhabited the first house in Yerba Buena, and when?

Ans.—I believe I built the first house here and lived in it; that was in 1836.

(Objected to by counsel for claimant on the ground that it calls for construction of written documents and not for facts. P. L.)

Ques. 4.—Look at Document No. 3, annexed to M. G. Vallejo's deposition in this case, and state if you know the location of the place therein called the Pueblo of San Francisco de Asis, and the Plaza of the Pueblo therein mentioned.

Ans.—The locality known as pueblo of San Francisco de Asis, was the Mission of Dolores, and which sometimes was called Dolores. The Plaza referred to in this paper means the Plaza in front of the church at the said Mission.

Ques. 5.—Was there any other place in the vicinity of said Mission, or of the present site of the City of San Francisco, called San Francisco de Asis at any time before the American occupation of the country, or any other place, which at the date of this document was called the Plaza of said Pueblo?

Ans.—There was no other place except the Mission in this vicinity known as San Francisco de Asis, nor any other Plaza known as the Plaza of the said Pueblo before the American occupation of the country.

Ques. 6.—Look at Documents 5, 7, 8, 13, 14 and 16, annexed to M. G. Vallejo's deposition in this case, and state where is the locality of the place referred to in them, in the address or otherwise in said document, called San Francisco de Asis and San Francisco.

Ans.—San Francisco de Asis was the name given to the locality of the Mission Dolores, and, as I understand it, the name in these documents refers to that locality, as also the name San Francisco. The Alcades lived at the Mission.

Ques. 7.—State, if you know, whether the municipal or other authorities, or the citizens of said Mission, or so called Pueblo or town, previous to the American occupation of the country, ever exercised any acts of ownership over, or laid claims to any lands whatever in the present county of San Francisco, as land of the property of the town, and if the said town, or any other town within the territory embraced by the present county of San Francisco, was ever reputed to be the owner of, or have any right to any land whatever, and if yea, explain what lands, and by what right they were held or claimed.

Ans.—Until the year 1839, I never knew the Pueblo to claim any lands, or exercise acts of ownership over them ; after that, the Pueblo of San Francisco de Asis claimed lands in a portion of this place (the present city of San Francisco.) In the year 1839 there was a survey made of this place, (city of San Francisco,) in November, 1839, which included the streets now known as Montgomery on the east, Pacific on the north, Dupont on the west, and California street on the south ; all the land embraced in that survey, the authorities in San Francisco de Asis exercised ownership over, for municipal purposes, for granting town lots. That is the only land I know of over which the authorities aforesaid exercised jurisdiction, in this place, then known as Yerba Buena. Those lands were claimed by an order which came from the Prefect, directing grants to be made to settlers in this place.

Ques. 8.—Did the claim you speak of in your last answer consist merely in the exercise of the power to grant lots to individuals, communicated by the Departmental Government, within the boundaries which you have mentioned ?

Ans.—That was the substance and intention of the claim—that was all.

CROSS-EXAMINED BY ATTORNEYS FOR CLAIMANT.

Ques. 1.—Who made the survey of which you have spoken ?

Answer.—Captain Vioget made it.

Ques. 2.—Do you know of any grants of lands having been made by the municipal authorities of San Francisco, previous to 1839 ; if so, what grants were they ? and by whom or to whom ?

Ans.—I know of no grants being made by said authorities before 1839. The authorities of San Francisco, before 1839, granted in this place (Yerba Buena,) to myself, one 100 vara lot, about where the Saint Francis Hotel stands, on the south-west corner of Clay and Dupont streets, and they granted also, before 1839, to William A. Richardson, a lot of the same dimensions, adjoining the grant to me, on the northern side. I do not recollect of any other grants being made by said authorities before that date. These grants which I speak of were made in pursuance of an order from the Governor (Chico,) which I brought myself from him, in June, 1836.

Ques. 3.—Was any price charged for lots which were granted after Vioget's survey in 1839; if yea, what price?

Ans.—Yes, after the survey by Vioget, I myself had a title perfected to a lot, for which the authorities charged me twenty-five dollars; it was a one hundred vara lot; it was a lot now on Montgomery street, between Clay and Sacramento, and was marked No. 1, on the map; I paid that amount to the municipality for the lot; Francisco Guerrero made me a deed for the lot, by order of the Governor, to whom I had applied for such a grant.

Ques. 4.—Was there, at that time, any regular price fixed for these lots; if yea, what was the price, and was it exacted of every one who obtained a lot in the survey?

Ans.—Yes, there was a price fixed, for a fifty vara lot; $6 25 was the price, and every vara over fifty, in front, was 25 cents per vara; to the best of my knowledge, this price was exacted of all who obtained lots.

Ques. 5.—By what authority was that price established?

Ans.—I am not able to say; I believe it was the custom of the country, in all pueblos; it was the custom in Monterey.

Ques. 6.—Who directed the survey to be made by Vioget, in 1839?

Ans.—I do not recollect; I think it was either Alvarado or Castro.

RE-EXAMINED BY U. S. LAW AGENT.

Question 1.—Was the sum which you have referred to as the price of lots, which were granted, called *derechos*.

(Objected to by counsel for claimant as leading the witness. P. L.)

The question withdrawn by the Law Agent after the objection was interposed, and before the question was entirely written, but after it had been spoken in hearing of the witness. P. L.

Ques. 2.—Was the sum which you have referred to as the price of lots, designated by some particular name in Spanish, if yea, what was it?

Ans.—Yes it was so designated; it was called the funds of the municipalidad; municipal fund is the translation.

Ques. 3.—Please mention the Spanish word by which the sum paid for the grant of lots was designated?

Ans.—The term was *Los derechos de la Municipalidad.*

CROSS-EXAMINED AGAIN BY CLAIMANTS COUNSEL.

Question 1.—Do you not claim lands within the limits claimed by the city of San Francisco in this case, and for which you have petitioned this Board for confirmation, if yea, state what lands and under what title you hold them?

Ans.—I claim land in this place, which was a grant to me and Sal-

vador Vallejo, in the Spring of 1839, before the survey by Vioget, of which I have spoken, which is now known as Clarke's Point.

Signed, J. P. LEESE.

Subscribed and sworn to before me on this 11th day of May, A. D., 1854.

(Signed,) PETER LOTT,
Commissioner for taking Testimony, &c.

BEFORE COMMISSIONER LOTT—MAY 15, 1854.

Charles E. Picket deposes that he is a resident of San Francisco County, thirty-five years of age, and has resided in California since July 1846. I lived in Yerba Buena from July 1846 till March 1847. From my inquiries and examinations about July 7, 1846, which were very particular, there was no regularly constituted municipal corporation on the present site of the City of San Francisco at that date. I had a conversation with Francisco Guerrero, and I think I had with M. G. Vallejo, though I am not positive. I think so from the fact that I conversed with most of the ancient Californians upon the subject, and there seemed to be but one opinion. On my return, after an absence of a few weeks, I found that Capt. Montgomery, at the fort, had appointed his second Lieutenant, Mr. Bartlett, Alcalde. Soon after my arrival in town, Mr. Leidesdorff and other citizens, I do not know (I stopped at Leidesdorff House) said they had been trying to get Capt. Montgomery to authorize the new Alcalde to grant lots as the old ones had done under the Mexican Government, but that he had hesitated, believing that he had no authority to do so. They then requested me to see Capt. Montgomery, and gave me some reasons why he ought to give the authority. I saw Capt. Montgomery on the subject, and represented the wishes of the citizens to him. He then stated to me that he could get no positive information as to the authority he or the Alcade had for granting land, and requested me to get all the information I could on the subject and report to him. Mr. Leidesdorff was my interpreter conversing with Jesus Noe, Ex-Alcalde, and with Francisco Guerrero, and also Francisco Sanchez and Jose de la Cruz Sanchez. They all concurred in the opinion that there was no *Pueblo* in existence here. They also stated the usage and custom which had been adopted by the Alcalde here, in granting lands. This all took place here (San Francisco) in September, 1846.

GENERAL VALLEJO'S LETTER.

Sonoma, Nov. 7th, 1843.

Senor Don Guillermo Richardson :—Esteemed Sponsor, (compadre;) Senor Don Manuel Castanares writes to me requesting to inform him about the vacant lands existing in the "Yerba Buena," and particularly on the sea-beach ; as Senor Don Manuel seems to be a little jealous of the extensive grants which Senor Don Manuel Micheltorena has made to other individuals, as you know Senor Castanares wishes to enjoy also the same rights that the foreigners do. You know that he has held several offices, and that to-day he is the Collector of the Maritime Custom House, and he wishes also to get something, as all the rest.—He solicits to obtain a tract of a thousand "varas" long, by two hundred "varas" wide, and besides fifty "varas" in the sea, the whole length to make a wharf.

It seems to me, sponsor, that this Senor works to have the Custom House brought to San Francisco—let us see. You know that always it was my project, that the Custom House should be removed to San Francisco, and I believe that my friend Castanares knows something, for he came from Mexico full of the projects of Bandini, Hisar, Pardres and Aranjo, who, had they not fallen into disfavor, would have consummated said removal. However,we shall see how the thing goes. I, for my part, don't think that the Custom House may remain in Monterey. Whether the lands be given to foreigners or natives, matters us little, after the object being obtained. But it would be far better that he should have such land in preference to other strangers as I came to understand.

I send you also the letter of Don Francisco Sanchez, about the subject, to whom I have written already as Alcade of the place, to state which are the vacant lands of such dimensions as you will see, he indicates to me the boundaries of a devil of a tract. I think that you know better of the grants made, so I hope you will have the goodness to give me your opinion, that I may write to Senor Don Manuel Castanares, about his solicitation to water privileges, which he is going to ask the Governor, following the example of Leese, Salvador, and the Russians, &c. ; also that you may give me an idea about the land, with a deliniation of the sea-beach, although I think it be a foolishness to ask for since it is worth but little, it is deep bottom, there are so large rocks, that Capt. Steel on one or two occasions, got his vessel struck, while I was on board, and besides you know that at the very place there lay the wreck of the Spanish Brig of War, "San Carlos," which was cast away, I think, in 1812.

I believe that your statement about the subject will be of much weight in favor of Senor Castanares, and will be considered the best report as may be given, since by your practical knowledge as a resi-

dent of the place, you have been Captain of the Port many years, and this is of much consideration to the subject in question.

Also, I understand that our friend, the well-known Limantour, who you will recollect wrecked on "Punta de Reyes," and whom we helped to save a part of his goods, with thousand troubles, has furnished large sums to General Micheltorena, and that if he does not intrigue, at least he endeavors to obtain some grants in that and other places, taking advantage of the poverty and scarcity of the revenue of the Treasury of the Department.

Finally, we should endeavor as a first point in view, to get and bring the Custom House to San Francisco—since from that, it will not only result a good to the country, but to ourselves particularly. I have sent the exposition made to the Government, printed here officially; and this, it seems to me, has opened the eyes of Senor Castanares, who has no property in Monterey. Besides, you know, that I have many friends in Mexico, and particularly the friendship of the President of the Republic, to whom, both privately and officially, I have written extensively; and according to my political and financial barometer at the Capitol, Senor Virmond, the thing takes a very favorable aspect.

Senor Castanares has told me in private conversation, that he thought of establishing a rancho here, and I offered to give him cattle, horses and Indians, in this way calculating upon his friendship, as we shall predispose him in our favor. The General himself is well disposed to foster the advancement of the country. I can operate, as you know, so efficaciously that almost I am able to assure you that the thing will be done.

This companion and friend wishes you prosperity.

(Signed) M. G. VALLEJO.

I, George Fisher, Secretary of the Board of the United States Commissioners, to ascertain and settle private land claims in the State of California, certify the foregoing to be a translation of a Spanish document on file in this office, in case No. 548, Jose Y. Limantour, and under my charge and custody, as such Secretary.

Witness my hand this 22nd day of September, 1853.

(Signed) GEORGE FISHER, *Secretary*

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A.

Jose Figueroa, Brigadier General of the Mexican Republic, Commandant General, Inspector, and Gefe Superior Politico of the Territory of Upper California.

The most Excellent Territorial Deputation desirous of supplying to the *pueblos* the funds necessary for works of common utility, has been pleased to accord the following:

Plan of *propios* and *arbitrios* for municipal funds of the Ayuntamientos of the territory of Upper California.

Art. 1.—The *Ayuntamientos* will apply by the ordinary channels, soliciting that to each *pueblo* lands be assigned for *ejidos* and for *propios.*

Art. 2.—The lands of *propios* which may be assigned to each *pueblo* shall be divided into middling sized and small portions, and may be rented, or given out on quit rent (*censo enfiteutico*) at public auction.

The present possessors of lands of *propios* shall pay the annual rent, (*censo,*) which according to the discretion of the *Ayuntamientos*, with the previous *informe* of three intelligent men, may be imposed.

Art. 3.—For the concession of a lot to form habitations, the parties interested shall pay six dollars and two rials for each lot of one hundrod varas square, and thus progressively or diminutively, shall pay at the rate of two rials per vara front.

Following are 15 articles more, relating to matters not material in this case. The last article, which is the 19th, provides that the subject shall be reported to the Supreme Government, which appears to have been done by the following communication, which is annexed:

E. S.
(EXCELLENT SIR.)

I have the honor to transmit to you, accompanying this, three copies of the *bando*, which contains the plan of *propios* and *arbitrios* for these municipalities, accorded by the Excellent Deputation of this territory, on the 30th of July last, in compliance with article 19, and in order that you may be pleased to bring it (elevate it) to the cognizance of the most Excellent President for his supreme resolution, as he may esteem just.

God and Liberty, Aug. 6, 1834.

EXCELLENT SENOR,
Minister of Relations.

B

This Document is a copy certified by the U. S. Surveyor General for California, from the Journal of the Territorial Deputation, from the 31st day of October, 1834, to the 3d day of November following inclusive, when the Deputation adjourned *sine die.* In the proceedinds of the 3d Nov., is contained the resolution, duly adopted, which is referred to in Doc. No. 1, annexed to the deposition of M. G. Vallejo that " the Gefe Politico shall take the necessary steps to the end that the *Partido* (district) of San Francisco proceed to the election of a Constitutional Ayuntamiento, which must reside in the Presidio of that name, composed of one alcade, two *regidores,* and one *Sindico Procurador,* being regulated throughout in carrying it into effect by the Constitution, and the law of 18th July, 1830 (should be 12th July.)"

In none of the proceedings is any reference had to the subject referred to in Doc. No. 4 and 18, annexed to the deposition of M. G. Vallejo. The remainder of the proceedings of the Deputation referred to in Doc. B. have no material connection with this case.

C

This document is an *Expediente* certified by the Surveyor General, from the old archives of California remaining in his custody.

It contains:

1.—A petition to the Gefe Politico, dated Ranchos of the North, San Antonio, San Pablo and those adjoining, May 30, 1835. The petitioners represent themselves as the residents of said ranchos of the north, "belonging to the jurisdiction of the port of San Francisco," and represent that they are subjected to great inconveniences, by being subject to that jurisdiction, among which are the perils of the sea and the danger of shipwreck, in their voyage to said port, which, they say, will be at least forty leagues, going and returning. They say, that in the said " Port" there are no lodgings for the accommodation of an Ayuntamiento, with their families, for a whole year, after having brought with them the supplies necessary, during the time of their official employment, and that to serve in offices which they may be called to fill, they will have to abandon their families and private affairs for a whole year, for which reasons, and others not material, they pray to be annexed to the jurisdiction of the authorities of San Jose, deputing for them a person charged with the administration of justice, who will be subject to the Judge of San Jose, as

the *cabezera* (capital) as, in those ranchos, the greater part of the citizens reside with their families. It is signed by

Antonio Ma. Peralta,	Juan Jose Castro,
Joaquin Isidro Castro,	Gabriel Castro,
Blas Narvais,	Candelario Balencia,
Santiago Olbera,	Jose Peralta,
Fernando Felis,	Joaquin Moraga,
Antonio Armijo,	Ramon Torivio,
Juan Bernal,	Jose Duarto,
Bisente Peralta,	Francisco Pacheco,
Antonio Igera,	Mariano Castro,
Bartolo Pacheco,	Filipe Briones,
Ignacio Peralta,	Domingo Peralta,
Bruno Balencia,	Julian Vil,
Rafael Felis,	Francisco Soto,

Francisco Armijo.

On the 5th Sept. 1835, the subject having been passed to the Territorial Deputation, pursuant to an order of the *Gefe Politico*, Jose Castro, endorsed in the margin of the petition, they report that they find the application to be "founded in justice, reason and public convenience; but as the subject ought to be treated of with the necessary previous informes," they consider that these ought to be given by the Ayuntamientos of the pueblos of San Jose and San Francisco. They accordingly so resolve, and that the Expediente shall afterwards be returned to them with the *informes*.

Sept. 28th, the Gefe Politico orders the *Expediente* to be passed to those Ayuntamientos accordingly, and when returned with the *informes*, to be accompanied with a list (padron) of the citizens of the pueblo of San Francisco.

Nov. 4th, 1835, the Ayuntamiento of San Jose report in favor of the application, observing that the petitioners had previously pertained to that jurisdiction.

Dec. 20, 1835, in a report dated at the "Port of San Francisco," "the Ayuntamiento of San Francisco, says that the reasons set forth by the petitioners why they ought not to belong to this jurisdiction are frivolous in their conception," and after many observations irrelevant to this case, advert to the fact that the petitioners have represented "that in the *Presidio* there are no lodgings where they can live for a year when they may be called to discharge some office in the Ayuntamiento, the which is not true (allowing us so to speak) and they deviate from the truth therein, and frankness which they ought to observe before the authority which they are addressing (as they likewise do in putting names as subscribed which really do not exist, and which might be mentioned) for it is evident and an established

fact that the military Commandant of the Presidio furnished houses to the functionaries of the present Ayuntamiento as soon as it was installed."

"In conclusion," they say, "the land or coast which embraces the petitioners, has formerly pertained to the jurisdiction of the Presidio; for besides forming with that of the Port itself the bay of San Francisco, the Rancho of Castros which is in front of the Presidio (a little more northerly) is scarcely two leagues distant by sea, and that of the Peraltas, two leagues, and a little more to the west; which circumstances were without doubt the *data* upon which the most Excellent Deputation proceeded, when in the latter part of the year 1834 (counting upon those citizens) resolved that the formation of the Ayuntamiento should be proceeded to (making report to the Supreme Government) and the Commandant General and *Gefe Politico* at that time D. Jose Figueroa (may he rest in peace !) acting from the same reasons as the corporation (the Deputation) proceeded to carry their resolution into effect, thus giving orders to the Military Commandant of San Francisco; and over and above the circumstances aforesaid, likewise concurs, that when said deceased Figueroa delineated (al demarcar) (although provisionally) the limits of the jurisdiction of San Francisco as appears from his official note remaining in these archives, he likewise included that part of the land and property (terreno y bienes.") This is signed by Francisco De Haro and Francisco Sanchez Secretary, and with that the *Expediente* ends.

D.

A message from the Governor delivered to the Departmental Junta on the 16th day of February 1840, in which the condition of the country is treated of elaborately. The following extracts contain all that is in any way material in this case.

"*Ejidos*—No one of the said towns (of the department) with the exception of Monterey, have marked out to them the *Ejidos* and lands of *propios* which ought to be fixed for each one of the municipalities, in order that they may know their *fundo legal*, for which reason the Government on making grants immediately about the towns, has done it provisionally, in anticipation of the regulation of this matter. The proper *informes* have been repeatedly required. Your Excellency (the Junta) in view of all and in use of the powers which are conceded to you in the first part of article 45, of the said law, (of 20 March, 1837,) and with the concurrence of the Government, will regulate as may be convenient."

Agriculture.—Under this head the message states that during the few years past a considerable quantity of land has been granted both

to natives and foreigners, but that "it is to be noted in respect to the greater part of the said grants, that they possess the character of illegal concessions, if it be considered that they exist within the ten littoral leagues which the law regulating the subject of 18 Aug., 1824, expresses." It states in continuation that the different *Gefes Politicos* and provincial deputations considering the narrowness of the country lying altogether upon the coast, and that to oblige the farmers to establish themselves in the interior, would be to expose their lives and property to the savage tribes, were obliged to accede to such concesions. "But it is to be observed likewise that upon this subject no application has been directed to the Supreme Government, which has for its object the legalizing of them, nor am I aware that this subject has been brought to its cognizance. Your Excellency (the Junta) to whose attention I commend this business for the benefit of agriculture, will take the appropriate initiative, directing to the Supreme Government the due representation by which the lands of said proprietors may be secured in a legitimate and permanent mode."

E

Is a copy certified by the County Recorder of a certain book in the Spanish language, which appears by the certificate of Washington A. Bartlett, the first American Alcalde, dated Aug., 1846, to have been handed over to him by *Don Jose de Jesus Noe*, the last Mexican Justice of the Peace, and Bartlett's immediate predecessor, "as containing the only record of the grants of lots in said town of Yerba-buena."

This book purports to contain a record of all the grants made in the Pueblo or Mission of San Francisco and the place (*paraje*) called Yerba-buena at any time prior to the time of its delivery to Mr. Bartlett.—The dates commence in 1839, and end June 6, 1846.

It has three headings as follows :

1. "Book in which are evidenced the possessions of *solares* in the point (*punto*) of Yerba-buena in virtue of the orders (*lo despuesto*) of the Departmental Government."

2. "Are evidenced those granted in the establishment of Dolores in pursuance of the authority applied for (*lo pedido*) by the Prefecture of the District of the government of the Department, of which (fact) I have cognizance, as appears from the official note which is found on page two."

3. Gives a "formula showing the mode in which possessions of *solares* to form habitations have been given to the citizens (*vecinos*) of the jurisdiction of San Francisco de Asis."

The official note referred to, which appears to have been written by Jose F. Castro, acting *ad interim*, and dated 1841, states

that he had received from the Secretary of Government an official communication, dated 16th April, 1841, reciting that when the Prefect, Don Jose Castro made a visit to the north, he bore with him instructions from the government on various subjects, and among others, it was ordered that *solares* might be granted to individuals in the establishment of *Dolores*, but they must not exceed fifty varas, which disposition of the government was now renewed in consequence of the official communication of the Prefecture, dated the 6th of the same month, which his Excellency, (the Governor,) had seen.

The grants entered in the book of a date anterior to this communication, are generally of 100 varas, but those of a subsequent date, both at the Mission, and at Yerba Buena, are of fifty varas only, except those made by the Governor.

In this book are recorded fifty-five grants, in all, at both points. Of these, ten appear to have been made either directly by the Governor, or in pursuance of his *special* order. Five were made in compliance with a special decree of the Prefect made in each individual case. The grants by the Governor and the Prefect are indiscriminately of one hundred vara, and fifty vara lots. Two of the Governor's grants, at Yerba Buena, appear to have been made April 22, 1846. The remaining grants appear to have been made in virtue of the authority given by the Departmental Government, referred to in the heading of the book, and to which allusion is sometimes made in the subsequent entries, and sometimes not. One of the grants made by the Governor at Yerba Buena, is in the form of a license to erect some sort of machinery, and the decree of the Governor contains these words:—"it being understood that as soon as the said *solar* shall be disoccupied by the machine referred to, it shall remain to the benefit of the nation for the uses convenient." The word town or *pueblo* is nowhere used in the book, but a plan is several times referred to. The place in which the grants this side of Mission Creek are made, is designated as the *paraje* (locality), or *punto* (point) of *Yerba Buena*.

BEFORE COMMISSIONER LOTT.

MAY 22, 1854.

Francisco Sanchez testifies that in the year 1838, the only persons residing at the Presidio of San Francisco were, Candelario Miranda, Joaquin Piña, a corporal of artillery; Eusebio Soto, a private in the artillery, and he thinks, Bartolo Bojorquez; that Antonio Soto and Apolonario Miranda, lived on lots near the Presidio; that after the year 1838, and up to the time the Americans took possession of the country, in 1846, the said Joaquin Piña and Eusebio Soto were the only persons who lived there with their families—that the Presidio continued to be occupied as a military post till the Americans took it, and occupied it for the same purpose, in 1846, at which time witness

was the commandant of the post; that when the Americans took possession, in 1846, the resident citizens living at Yerba Buena were, Apolonario Miranda, Jose de Jesus Noe, Robert Ridley, Juan Cope, Augustin Andrews and Juan Fuller, Gregorio Escalante, the widow of Mr. Hinckley, who had died a few days before, and Jose Altamirano, with his mother, and he does not recollect whether there were any others.

That there were other persons, not *citizens*, who at that date had their residence and place of business at Yerba Buena, namely: Altan Espian, William Davis, Mr. Rhett, William Smith & Co., Mr. Leidesdorf, Pedro Sherribach, Mr. Bennett, Carlos Gline, John Davis, a man who was selling goods on a lot of Juan Cooper, Tinker & Thompson, and some others that he does not recollect, but certainly less than twenty in all. That, at the same time the number of residents at the Mission of San Francisco (or Dolores,) would be at most one hundred and fifty persons, and in all the rest of the *Partido* of San Francisco, on this side of the bay, outside of the places named, there were not five hundred persons, and he cannot say that there were two hundred. In that part of the partido of San Francisco lying on the other side of the bay, he can recollect only thirty-four families.

He further testified that the lots referred to, which were occupied by Miranda and Soto, were situated on the road from Yerba Buena to the Presidio, at a place called Ojita de Figueroa, on the left hand going from Yerba Buena; that at the Presidio there were no buildings but the military square, all of which appertained to military uses. Two hundred varas from it was a house, which was the nearest, and there were at one time others outside on lots which had been granted to individuals. The Ojita de Figueroa is about one thousand varas from the Presidio; that after the Ayuntamiento was organized it had its archives in one of the rooms at the Presidio. That he never heard of any rooms being assigned there by the commandant, for the residences of the members or their families, but they occupied such rooms as were not occupied by the troops.

He further testified that all communications and papers pertaining to the archives of the Ayuntamiento, after being opened and seen by the alcalde, were passed into the hands of the secretary, to be filed by him. The archives were kept in a desk, where the Ayuntamiento held its meetings. The alcalde had the key of the desk.

On the 24th day of May, 1854, upon the hearing of the cause before the board in open session, Francisco Sanchez was again examined and testified that he was secretary of the Ayuntamiento in the years 1835, 1836 and 1837, and as such had the custody of the archives of the Partido of San Francisco; that during the time he was such secretary he has seen no paper assigning any limits to any *pueblo* in said *Partido*. There were in the archives, decrees and orders of the Governors and correspondence with other authorities. The archives of the

Military Commandancy of the North remained in the said Commandancy. I received none of them. The Ayuntamiento of which I was the secretary was a newly created body and formed its archives from the beginning. When I was secretary of the Ayuntamiento the commandant of the Presidio kept his archives in his office, that is, in the *Comandancia* which was at the Presidio till 1838, when the *Comandancia* was transferred to the Mission of Dolores, or San Francisco de Asis, and the commandant carried his archives there with him in a box. My father, Don Jose Sanchez, was acting commandant of the Presidio of San Francisco in the year 1833. On being asked if there was ever any demarkation of limits to the so called Pueblo of San Francisco or San Francisco de Asis, by any authority whatever, he testifiedthat he had seen no measurement or marking out of any limits of a pueblo. That in order to avoid disputes relative to the jurisdiction of the Ayuntamientos of San Jose and San Francisco, the Rancho de las Pulgas was established as the boundary between the jurisdictions of the said Ayuntamientos, by an order of the government, and a line from the summit of the Sierra Morena, by the arroyo of San Francisquito to the Tulares, including Contra Costa, Sonoma and San Rafael, within the jurisdiction of San Francisco.

POINTS ON BEHALF OF THE UNITED STATES.

1. There is no evidence of the establishment of a Municipal Corporation at any time within the present limits of the City of San Francisco. The Ayuntamiento elected in 1834–5, was for the *Partido* of San Francisco, which embraced all Contra Costa, Sonoma, San Rafael, and on this side of the Bay, the whole of the present County of San Francisco. It was a change of the former Military Government, which the Commandant of the Presidio had exercised, into a civil Government for the same district.

2. The head-quarters of the civil authorities elected to supercede the Military Commandant, though first established at the Presidio for want of some other suitable place at that time, were afterwards removed to the Mission of San Francisco, commonly called Dolores, which thus became the *Cabezera* (Capital) of the *Partido*, and continued to be so till the time of the American occupation of the country. There the Ayuntamiento held their sessions so long as that body continued. There the elections were held, and there all the municipal officers resided, kept their public offices, and the archives of the civil government of the Partido with the exception of Capt. Hinckley and Jesus Noe.

3. The place called indiscriminately, the Pueblo of San Francisco, and San Francisco de Asis is the secularized Mission of San Francisco de Asis or Dolores, and no other place was ever known by that name previous to the American occupation. No part of the country this side of Mission Creek was ever considered as included in it. On the last two points, all the depositions, documents and evidence concur without any exception.

4. No limits were ever assigned to the so called pueblo of San Francisco or any other pueblo in the present county of San Francisco by any competent authority, nor by any authority whatever.

5. The document No. 18 annexed to the deposition of M. G. Vallejo, though incompetent as evidence, insufficient to prove the fact intended to be established by it, and wholly irrelevant to the matter in controversy if it did prove it, is abundantly shown to be a forgery, by the deposition of Alvarado, Hartnell, Richardson and Castro. Besides this, in point of law, the Gefe Politico and deputation had no power to fix limits to any *pueblo*.

6. There is not only no evidence of the establishment of a municipal corporation anywhere in the present county of San Francisco, but the fact is that no authority existed in California competent to create one.

7. But if the existence of the municipal corporation had been clearly made out with its limits defined, and established by competent authority, that is, admitting all that the claimant has even *attempted* to prove, it would not tend to support the claim in this case; it would only show the *competency* of the corporation to *acquire* and to *hold* property. The claimant has not attempted to prove any *grant* or pretended that any was ever made in point of fact.

8. By the laws of Mexico, towns of every class, though capable of acquiring property, have none by virtue of their establishment as such, real or personal, none but what they acquire in the same mode and with the same legal requisites as individuals with this one superadded to those necessary in the case of individuals, that towns to receive or hold landed property must have the special license of government.

9. By the laws of Spain and Mexico all municipal corporations enjoy just such rights, privileges and exemptions, as may be specially granted to them in their charters or other special legislative acts, and as to property, they enjoy such as they can get from the lawful owner in the usual legal mode, with the license of government superadded.

10. The demarkation of limits to towns, *Partidos* or provinces, has nothing to do with property, but all property (by the laws of Mexico) which may be embraced within such limits when established, real and personal, remains unaffected in the possession of its several proprietors, whether the proprietor be an individual, a corporation, or the sovereign.

11. Although municipal corporations are competent to acquire pro-

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perty with the license of Government, no power ever existed in California competent to grant the smallest portion of the public domain, as the property of such corporations, for any purpose whatever.

12. The laws of the Mexican Republic, which must be the only rule in the territories, and the departments which previously existed only as territories, make no provision for granting or reserving public lands to municipal corporations, but the whole system of town lands or reservations was abolished, and therefore no power but the general Congress was ever competent to make such grants in California, since the independence of Mexico was established.

13. Under the laws then, as they existed in California, prior to July 7, 1846, no city or pueblo could hold land without express grant, and if the property in the soil had not in fact at that time passed from the sovereign to some person or corporation to whose rights the present claimant has succeded, no confirmation can be had in this case, unless the 14th section of the act of 1851 is construed to operate as a transfer to the present city of San Francisco.

14. That section instead of *granting*, directs how city lots held under grants to individuals from corporations to which lands may have been granted, shall be presented to the Board, thus showing that this Board is confined to questions connected with actual grants.

15. In this case, as no grant has been proved, the claimant must rely on the presumption raised by said section 14.

16. To make that presumption available, the claimant must bring itself, by the proofs, within the provisions of the act. In the first place it must be shown that the corporation has granted lots to individuals and the claim to those lots may then be presented by the corporation, and the clause making the existence of a city on the 7th of July, 1846, *prima facie* evidence of a grant to such corporation, only applies to cases where the corporation has presented those individual claims, and for the benefit of those claimants. The city has failed to present any grants on behalf of private individuals, and is not therefore entitled to the benefit of any presumptions raised by the statute. On the other hand she claims adversely the whole land within certain limits, showing numerous adverse claimants, when the evident intetion of the statute was to enable a city (or individual) where the claims must otherwise be numerous, to present each sub-claim in one petition, and thus obviate the necessity of making proofs in a large number of cases, of one original grant.

17. But if a grant is to be presumed under the statute, can you presume more than the bare existence? Would you not be compelled to prove the *loss* and the *contents*, as in other cases. The statute only provides for a presumption of the existence of a grant. How then will the terms be fixed? who is presumed the grantor and who the grantee? What is the presumed date of the grant? What are the limits to be assigned under the direction of presumptions? Will you establish a point and make the limit equidistant from it in all its parts

ERRATA.

On page 8, in answer to interrogatory 17 for are "*not* all dead" (5th line) read are *now* all dead.

Same page, in 4th interrogatory by U. S. Law Agent, for "*Potrero*" read *Partido*, and in the answer thereto, for "*I* did not," read, *it* did not.

On same page, at the continuation of the examination, insert the date (Feb 15.)

Exhibit No. 4, referred to in the deposition of M. G. Vallejo, is not inserted, it being merely a copy ef Exhibit No. 18·

The testimony of H. W. Halleck is taken from the minutes of the claimant's counsel, the official record of it having been mislaid.

On page 57 the words "at the fort" should read—"on my return from the fort at Sacramento." [Inserted here by request of C. E. Pickett.]

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CALIFORNIA STATE LIBRARY SEP 30 1

THE QUESTION OF THE TITLE TO THE OUTSIDE LANDS.

SETTLER *(in proper.)*

VS.

THE CITY OF SAN FRANCISCO.

ARGUMENT FOR PLAINTIFF.

SAN FRANCISCO:
ALTA CALIFORNIA BOOK AND JOB PRINTING OFFICE.
1866.

CALIFORNIA
SEP
30
STATE

A VOICE FROM THE SETTLERS.

The Question of the Outside Lands.

To the City of San Francisco:

I address you, fair City, in the aggregate. I may have some harsh things to say, and abusing a noun collective hurts no feelings.

I first became acquainted with you in the spring of 1847. You were a rough hoyden then, my dear: you were the offspring of the Mission Dolores; you bade fair to become a proud heartless beauty—you have kept you promise.

You were pleasantly supposed to be living under the Mexican law. A naval officer appointed an Alcalde to be your guardian; and you, to show your independence, sanctioned the appointment by your election. Perhaps you duplicated his title to the office so as to make it perfect, much as property owners hereabout are accustomed to buy every cloud that comes along without ever getting a perfect title. It was even so in your case. All the appointments and certificates in the world to the contrary notwithstanding, that officer could scarcely be a lawful Alcalde for you, under Mexican law, when that law declared you entitled only to Justices of the Peace. (Law of Congress, 20th March 1837. Dep. Ass., 1845.) Those Justices excercised the granting power by special delegation only. (See 6th Const. Law Article, 29, and Mr. Dwinelle's book in favor of the City claim. Ex. XIV. XXVI. XLIV. XLVIII.) Of course I sought no Alcalde grant. When Woodworth *vs.* Fulton came out I applauded my own wisdom, doubted it

on the appearance of Cohas *vs.* Raisin, and ceased to entertain any doubts whatever after Hart *vs.* Burnett.

Would you believe it? Not only did I suspect the validity of your guardian's grants, I even thought that there were no lands whatever belonging to you, and that you knew it well yourself, and this, principally, for the following

EIGHT REASONS.

1. The whole absurd system of town commons, violently assailed even in old Spain, (*Jornandes Ley Agraria,*) abrogated there by competent authority, (Cortes, 4th January, 1813.) reinstated by the Reactionists, and finally abolished in 1837, was so odious to the native Californians, that their local Legislature almost snubbed the Executive when the latter urged them to enact laws on the subject. (Session of 1840.)

2. Governor Alvarado's message of 1840 is inconsistent with the idea that any town in California (with one imperfect exception,) had common lands.

3. The Secretary of State declared in 1844 (Potrero case) that you had no lands.*

4. Governor Pico, as late as January, 1846, stood ready to receive bids for two leagues of land in your immediate neighborhood, which had been exposed at public vendue to satisfy the debts of the Mission Dolores.†

5. The Governors repeatedly made grants to individuals of large tracts at your very gates, and your local authorities repeatedly disclaimed title.

6. The whole extremity of the Peninsula lay buried under

* If we add to this, that the local authorities disclaimed title in 1845 (Point Lobos case—Expediente of Piña, etc.), the chain of evidence would seem complete. The presumption of a grant, arising under Sec. 14 of the Act of Congress, is rebutted by these facts, and the further fact that the Legislative Records of 1845 and 1846, which are quite complete, disclose no trace of a grant to the Pueblo, nor of any effort on its part to obtain a grant. But *sic placuit*, etc.

† I should have said one league. The inventory prepared by special Commissioners, in August, 1845, spoke of two leagues, one at San Mateo (Howard's Ranch), and *one, valueless for crops or pasture, situated close to the Mission.* Such a document would not of course be found in the Archives; a small fragment alone survived the Santillan controversy. But Mr. Hopkins, the accomplished keeper of the Mexican Records, will bear me out in statin gthat the original, from which I quote, exists to this day; only it is in private hands.

grants now declared to have been simulated; and those who forged them must have known the lands to be vacant.

7. You did not pretend to have any paper grant; and everybody considered this so much of an essential that, a document was forged to supply the want.

8. You acted as if you knew your claim to be unfounded, and of this more in detail hereafter.

DETERMINED TO WIN.

Nevertheless, you determined to win if possible. I think you deserved some credit for appropriating $40,000 for the prosecution of the claim. A distingushed Senator (not the sober one) received, I am told, twelve thousand five hundred of those dollars—ten more thousands retained another law firm. Herein you showed a high appreciation of genius; but what kind of talent did you remunerate when you purchased the Zamorana document for seven thousand five hundred dollars?

I also admired your forethought and prudence when I saw you enter, under the Act of Congress, some of the lands within your pretended boundaries; though I deemed the precaution somewhat inconsistent with your supposed conviction of the justice of your claim under the Mexican grant.

When I saw you laying out so much of our money on your land hobby, I felt a misgiving that you would prevail. But when I considered that these expensive forgeries were procured expressly to prove your title

UP TO THE VALLEJO LINE,

I fancied that, *beyond that line*, a man might be safe even from your rapacity. I trembled for my friends, Beideman and Hayes, but had no fears for my friends Culver and Hoadley.* Far beyond the tracts of these last mentioned gentlemen, I purchased a small interest in an ancient possession, located, as I fondly believed, on our mutual Uncle's domain. I cheerfully took the chances of the claims known as San Miguel, Laguna

* This is questionable. The Vallejo line, as generally understood, would, it seems, embrace those two settlements.

de la Merced, Punta de Lobos, Santillan, Limantour and Piña. Whichever of these might eventually absorb me, I should be left to deal with some thing human. At you, aye, and at Peter Smith, I deemed myself authorized to snap my fingers.

You know the result; Parsons scorned to survey me in. Mahoney selected his happy hunting grounds on the other side of the lake, where he keeps his grant revolving. The other claims got killed, no thanks to any sinews of war or strategy of yours. Their ghosts now frighten no one, *though your acts may yet have the effect of conjuring them up.*

SCHOOL WARRANTS.

One morning I awoke to find that some one, during the night, had laid a continuous spread of School Land Warrants over my own hermitage, and "all the fair demesnes that there adjacent lie." Astonishment, mortification, wrath, all these feelings succeeded each other in my mind, and were themselves followed by a conviction that, after all, the blanket was not uncomfortable; so "putting money in my purse," I groped my way to the factory, after many inquiries, and procured a piece of the requisite dimensions. With pride I now surveyed my field. At last it was mine. I reckoned without my—Field. A sudden chattering of all the ladies and gentlemen of the Press, apprized me that you had got me fenced in with a four league decree, considered final.*

THE DISPOSITION OF OUTSIDE LANDS.

I learn that the constant object of your meditation now is, what to do with my spoils. Sometimes you would sell outside lands and pay your debts. Sometimes you feel generous and would leave each possessor a moiety of what he holds, reserving vast areas for parks. You prate and think like a capricious heiress at a loss how to dissipate her fortune.

Did it ever occur to you to doubt whether, after all, you had not better remain dowerless. Wealthy dames are in danger of being wooed for their property. Again, a large estate requires

* A motion for a mandamus is said to be pending which will test the question whether the decision of the Circuit Judge is final or not.

a complicated administration. Yourself, never brought up to business, must rely upon agents, and you are not always very happy in your selections. So much are you suspected in this behalf, that your friend Senator Hawes found it necessary to tie you up hands and feet and double lock your strong box. He had tears in his eyes during the whole operation, for the man loves you though he mistrusts you for an unreliable minx.

THE DEBT QUESTION.

Are you quite sure that it would be advisable for you to be out of debt? Strange as it may seem, opinions are divided on this subject. It has been observed that the wealthiest cities and nations labor under the heaviestindebtedness. In your own case, many believe that the only thing that now keeps you from incurring still larger obligations is the very existence of the present burden which you labor under. They argue, with some show of reason, that the bitter experience, on each tax day, of some eight thousand voters, makes them vigilant on election days, and that, this pressure once removed, supineness would replace vigilance, and your affairs would relapse, you remember into what hands.

THE PUBLIC PARK.

Are you certain you want a park? But with this particular whim I do not propose to quarrel. I rather favor it. I always thought that your style of beauty was not of that kind which looks best unadorned. Only "dont steal my bread to purchase your gewgaws."

THE TEXT OF THE SERMON.

The above is really the text of this sermon. Like other texts of holier import, it ought to suffice without any paraphrase; but parsons know their hearers too well to venture on the experiment. In the same way, and for a similar reason, I must proceed to elucidate, selecting only such arguments as are suited to your comprehension.

Do you think seriously that you can wrest my possession from me? Have I and my fellow pioneers nursed and tended

you from your infancy to this day for the simple purpose of being despoiled by you in our old age? Though young, you are not without experience, and ought to judge the situation more clearly.

THE SOURCE OF THE CITY'S TITLE,

Bear in mind the source of your title. It is neither Spanish or Mexican. It flows from Gwin's Act of Congress of 1851, and a decision of Judge Baldwin. You know what their politics were. Probably the author and interpreter of the law held similar opinions in regard to your matters. You have been awarded lands because it was deemed *expedient* to make the award. It is one of the misfortunes of new countries that the Bench can seldom resist the temptation of making expediency the rule of decision. No doubt that rule, well applied, would be the best: but who can apply it well except the Great Omniscience?

In your case, it is manifest that expediency has been applied by human judges in several blundering and inconsistent ways. When it was first thought best that the title of land should be in you, it was so decreed. When, as a logical sequence, that title, so vested in you, became displaced by sales under execution, a due regard for expediency qualified your title. Nor is this all, for, in Brown *vs.* The City, it was decided that even the qualified title did not interfere with the granting power of the Executive.*

It is absurdly pretended that the Circuit Judge framed his decision, awarding you four leagues, without reading the argument of special counsel representing the Government. I do not believe this. A magistrate who, possessed of great intellect and learning, and enjoying unrivalled opportunities for special information, could, in the face of history and logic, award you four leagues of land, or any leagues whatever, need not shrink from reading Mr. Williams' brief.†

* This decision was right. Authority and reason happen here to agree. Of course, no further argument is here needed to vindicate the right of the Legislature to distribute these lands, even without the consent of the city, if the distribution were not already effected.

† Notwithstanding an ungenerous insinuation of the *Bulletin*, we settlers only "blow up" the Courts metaphorically. (See San Francisco *Bulletin* of January 23, 1866.)

You might as well think that you owe the decision to Mr. Dwinelle's book—a book that cost you some three thousand dollars, extravagant pet.*

You owe the decision to a mistaken sense of expediency. It was thought that you would prove the most benevolent of landladies. The Court has not been acquainted with you so long as I have.

"THE END IS NOT YET."

Now, "the end is not yet" of expediency decisions: and if, contrary to my expectations, the case should not be opened for examination of the merits; then, even then, Construction the handmaid of Expediency, will come to the rescue. It will be explained that, although the land is yours, yet it is mine. I hope I express myself clearly.

Still reasoning within the circle of your habitual thoughts, I now offer an argument which should prove an appeal to your avarice, and therefore be successful. I waive, for the purposes of this point, the question of uncertainty of title, and assume that no Mandamus lives, and that Construction sleeps with the just.

Suppose that some Russian noble had, for his only fortune, so many versts of sand hills as would constitute four leagues. Put the case, futhermore, that some perfectly responsible party should offer, in exchange for his quitclaim, to pay him and his heirs and assigns such a yearly sum as he himself should choose to establish as the measure of his necessary and unnecessary expenses, the payment to be secured by the land forever. Few will doubt that the rudest Boyard would accept such an offer without a moment's hesitation.

Wherever the light of civilization has penetrated, we find that public domains of all kinds, crown lands and municipal lands, have been conveyed to individuals on terms little differing from the foregoing. In these transactions, an apparent

* The book is a well written book. The fee was hardly commensurate with the labor. The idea which the text intended to convey was, that no book whatever was needed. Nothing more was wanted than to transfer the jurisdiction of the case from the District Court to a Court whose presiding Judge concurred in Hart *vs.* Burnett.

consideration has sometimes intervened, generally that of meritorious services ; but the true consideration has been a reflection, on the part of the sovereign or suzereign that they could exact a larger revenue from the lands when enfeoffed to many private individuals, than when administered directly by one liege lord.

THE QUESTION OF SETTLEMENT.

Now, from the begining, I have been willing to settle upon these very terms, viz : to take a conveyance and thereafter regularly pay my taxes. But the course pursued in this particular, has been quite characteristic. Yearly you cause my land to be assessed, hoping that my unsophisticated nature will induce me to pay the tax; and yearly also, you withdraw it from the delinquent sale list, for fear that somebody may acquire a title.* In that manner the revenue of several years has been lost, and, if the system continues, the loss of income will be equivalent to the entire cash value of my land.

I do not wish however that you should suffer any damage, even through your own selfishness. I stand ready to pay all the back taxes, upon the delivery of a paper conveying to me your title. On your own theory, that is all the interest that you ever had in my land : for you claim under a Mexican grant, and you must abide the tenure. Or would you prefer to take a fief and decline fealty, accept a trust estate and plunder the *cestui que trust.*

THE TENURE.

In an appendix to this allocution I propose to furnish a brief history of the Pueblo system, copied from a learned brief—all briefs are supposed to be learned. Read that, and also peruse the brief of H. Hawes, in the Manuel Larias case, or if you prefer, take my word for it, that these lands were granted (!) to you for the purpose of being distributed gratuitously to me and the rest of your friends. The generous donor had myself and

* At least since 1861. The authority for this high-handed proceeding is claimed under the first subdivision of Sec. 4 of the Revenue Act of 1861! Under the construction adopted every owner of land can escape taxation by constituting a municipal corporation his trustee. Will the Attorney General look to this?

the rest in his mind when he made the grant. Of you he only thought as a convenient medium. Or else select some Commitee, fond of travel, and send them to the nearest Mexican town—Mazatlan, for instance—to inquire how those things are done there, or rather how they were done before the advent of Max. the First—and Last.

Open the volume for 1823 of the laws of the Mexican Congress. You will find there an Act donating lands to the Pueblo de San Angel; the Habendum clause reads as follows: "to be distributed in small allotments among the inhabitants."

Of course you will snatch at the word "small" in the foregoing quotation, and inquire triumphantly if a quarter section is a small allotment. Let us examine the question, although my particular case refers to a tract scarcely one-tenth that extent.

In the first place, as you fail to produce your grant, we do not know that it contains the small word in question. Again, we find two Governors of California who ought to have known your tenure, taking from your inefficient hands the task of distributing your domain. One league of your land was not deemed too much for Cornelio Bernal in 1839. Another league was "distributed" to Jesus Noé in 1845. The Potrero case and, in part, the Visitation grant, furnish additional instances.* The United States, in its distribution of the public domain, clearly seem to think that a quarter section is quite small enough for a preëmptor.

But what if it be too much? You have, since the date of your grant, (establish that if you can) culpably and systematically violated its conditions. You have *not* distributed these lands in allotments great or small among the inhabitants. Your greed of money has stood in the way.

I know you would observe that if the land is to be distributed, the number of inhabitants is to be taken as the divisor, which, for your 5,000 acres, (you have no more,) would leave a quotient of one-twentieth part of an acre. But I assure you

* The Visitation grant and most of the Bernal are outside of the line prescribed by the decree of confirmation.

that the donor meant only those inhabitants who were willing to go there in person, or had means to maintain a rural possession.

You will not be required to advertise for information as to what inhabitants are willing to take outside lots as a gift, now that our labor as given them a value. Should you commit such a folly, the banks, offices and stores would be closed, the whole population would move out in a body, eager to share our spoils. But there need be no inquiry whatever. The distribution is a *fait accompli*. Such inhabitants as wished for land have gone to occupy it. The inhabitants who stayed at home preferred, I suppose, the pleasure of your company to the charms of a rustic life. Perhaps we incurred your displeasure by indulging the opposite inclination. Clearly the distribution has been unequal. But so, it seems, were our appetites.

POSSESSORY RIGHTS.

I am free to concede that many possessions are not so equitable as mine. I know of fences being put up to inclose a wilderness of sand, without any assignable purpose but speculation. Nevertheless, a long and persistent refusal to do justice to *bona fide* possessors has made it now impossible to discriminate. No discrimination was used on the occasion of the Van Ness Ordinance. Lands situated within a certain arbitrary line, and which, on the theory adopted, belonged as much to me as to the rest, were freely donated to the possessor without consulting me, without specifying quantity, and without establishing any distinction between lots covered with buildings and grounds surrounded by a speculative fence.

Let not the blunder then committed be repeated. Let there be no general ordinance passed donating to the occupants of a given date. Litigation without end would be the result. A paper title or none.

THE PARK QUESTION.

A few words about a Park and I have done. It may be considered expedient now to endow the coming generations with a Bois de Boulogne, or a Prater, or a Zoölogical Garden,

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although it is to be noticed that great cities find no difficulty in gratifying such fancies, whatever may be the price of land.

Many years however must elapse before any grounds to be now selected will assume, under patient cultivation, the least resemblance to those celebrated places of resort. It seems but fair that, if a middle course can be pursued by which the object may be eventually attained without oppression to the tax-payer of to-day, that course should be preferred. Let a broad avenue be constructed, and macadamized, which, starting from the neighborhood of Black Point, shall skirt the Bay, and, leaving it at some available point, trend southerly towards Lake Merced. This avenue, built at little expense, would furnish unrivalled facilities for rides and drives, and lead to the very spot which Nature has prepared for our Park.

A variegated surface, a good soil, a running stream, soft still waters in contrast with the neighboring surge; such are the features of a tract of about 2,500 acres extending from the beach to the crest of the lower San Miguel hills. Ornamental water works can be added with ease, for the Spring Valley pipes are close at hand.

The land might now be condemned at a moderate price, for such an improvement would be held to enchance the value of neighboring property. We might fence it, our children begin to plant trees and our grand-children enjoy the shade—when the north-west wind ceases to blow in summer.

How superior such a plan to the idea of studding the surface of the City map with little problematical squares, doomed, if ever properly reserved, to neglect and solitude.

At all events, whatever site is selected, let it be purchased at the expense of the whole people. No other plan is just; none other can be successful.

EUGENE LIES.

San Francisco, January 15, 1865.

APPENDIX.

HISTORY OF THE PUEBLO SYSTEM.

At the risk of repeating what has been urged here by others, a brief inquiry into the origin of the system will be attempted.

"No country," says Escriche (*Baldio,*) "can equal Spain for its area of uncultivated lands. This coudition of things dates from the Visigoths. Their conquest, and wars which followed it, depopulated the country and left large tracts of vacant lands, which these barbarians, disinclined to agriculture, dedicated to the more congenial pursuit of stock raising." Thus the pastoral interest took deep root in Spain, and the costant raids of the Moors tendered to foster it by the same influence which makes all borderers pastors. This interest exercised vast control in shaping the destinies, the national character and the legislation of Spain. Consult Escriche art. Ganado, and the several references he there gives. The pastoral laws in Fuero Juzgo show how strong that interest was at the date of that compilation. Time but added to its power.

"After the expulsion of the Moors," says Jovellanos, "the vacant lands should have been immediately reduced to agriculture. Policy and Mercy alike demanded an increase of food which the increase of population had rendered more necessary, but both took the course directly opposite. Policy, finding rooted the fatal system of pastoral legislation, favored it so much that it made vacant lands the *exclusive property of stock*, and Mercy considering them as the patrimony of the poor, struggled to preserve them—both failing to see that to devote the vacant lands to common use was to dedicate them to the rich.

This pregnant remark is further elucidated by Escriche *Bienes Comunes:* "These *bienes comunes*, wherein the whole belongs to each one of the Commoners or joint owners, and to all of them together, should be divided, (*deben repartirse.*) Since such a community is more prejudicial than advantageous, and is a perpetual scource of discord; because property so held, daily loses value, no one having any interest in improving it; and because, under an apparent equality, there is a positive inequality, the strong growing rich at the expense of the poor."

It seems that the necessity of encouraging agriculture by making grants of the common lands was early felt, and that some steps were taken in that direction. But so powerful was was the pastoral aristocracy, and so keenly alive to its own peculiar inserest, that Philip I, in order to obtain an extraordinary subsidy to repair the loss of the Armada Invincible, had to decree that no more judges should be appointed to sell common lands, which cities, towns and places had held as *propios*—that no more judges should be sent to sell or remeasure public lands, etc. L. 1, tit. 23, lib. 7, Nov. Rec.

The next two Philips in consideration of futher subsidies (17 millions) went further and bound themselves and their successors never to alienate the vacant lands. L. 2, same title and book.

The first Bourbon of Spain came from a country where the benefit of agriculture was somewhat known. He had small sympathy with the cattle interests of Spain. The policy of sovereigns and the traditional policy of his own family, were to curtail the power of aristocracies. Nor did he feel that subsidies voted to the house of Austria bound the conscience of the grandson of Louis XIV. He favored the alienation of vacant lands, and established a Junta for that branch of the public service. From that moment to 1746, the noble herdsmen never ceased their agitation. Ferdinand VI, yielded to the clamor. The alienations of vacant lands were annulled. The Pueblos were "reintegrated in their propios, &c." *Ley* 3, *same title and same book, and notes to such title.*

Further attempts by Charles III and IV, to promote the the settlement of vacant lands, were nullified by the manœuvres of the predominant interest.

The law of the Cortes, of 4th January, 1813, was rendered almost inoperative in Spain, partly by its own terms and partly by the Restoration.

In 1818 Ferdinand VII made another endeavor with the like success. Escriche says: "It is needless to say that these provisions remained without execution. The stock owners, who, in all times have combated the enclosing of hereditaments, in order that pasturage should not grow less, have opposed themselves for the same reason, to the alienation and cultivation of the vacant lands; and the influence of the stock owners has been stronger than that of the cultivators; and to no purpose have statisticians proved that the increase of cultivation would increase the number of cattle."

As to that part of the vacant lands called *tierras labrantias de Propios ô Consejiles*, though their partial cultivation under short term leases was provided for, (L. 17, tit. 25, Lib. 7, Nov. Rec.) the system adopted seems the best calculated to hinder permanent and serious improvement, while the *Ejidos* were carefully kept sacred from the hand of the laboring man. (See Escriche *Ejidos*.)

Whatever may be obscure in this matter these things are clear, viz: that, at the time, (1793, when Jovellanos wrote his celebrated informe on the ley agraria, there had grown up a system of towns commons throughout Spain; that *vecinos* of towns claimed and excercised the right to pasture their cattle in common over certain large tracts, whose freedom from inclosures and inalienability were strictly guarded; that, within those tracts, certain specific ones only could be enclosed for agricultural purposes under leases for short terms; that the authority to alienate all these lands lay in the crown, and that the sovereigns, after repeatedly exercising that right, had, in consideration of subsidies, promised to exercise it no more, nor delegate it to any one; that the parties interested in perpetuating that system were the wealthy stock owners residing

in towns; their stock ranged on the vast commons, their municipal outlays were borne by the precarious cultivator of the lands devoted to the municipal fund, called *de propios y arbitrios*. Against the prevailing system were arrayed the instincts of the cultivators of the soil, craving the ownership of the lands which they only possessed under yearly leases.

The first permanent victory of the latter was the ordinance of Charles IV, under which the *propios* could be leased for five years. But it was not until 1834 that the recommendations of Jovellanos were carried out. For the law of 1813, which provided for the *reduccion a propiedad particular* of all the *terrenos valdios ó realengos, y de propios y arbitrios*, not only in Spain, but in the provinces of *ultramar*, did not go permanently into effect in the mother country. Section IV of that law provided that the provincial deputations should propose the particular regulations most suited to each, for the carrying out of its provisions.

The war of the independence and the system of absolute monarchy, established in 1814, nullified the decree. Yet the law of Cortes of 10th May, 1837, purports to protect the rights acquired under its provisions at the two periods when it was in force. This must have been during the first brief reign of the Constitution of 1812, and at its reinstatement in 1821.

But in New Spain it was proclaimed as a law, and was published in 1829 as one of the laws of Spain, in force in Mexico.

In inditing their laws for the Indies on this subject, the Spaniards had not to contend, as at home, with the prejudices arising from a long settled system. Their legislation could therefore be more liberal—indeed must be, in order to induce emigration. While therefore, title V. L. IV of the R. I. provided that towns in the new world should be founded somewhat after the pattern of those of the mother country, and while the system of *ejidos*, (viz: a free vacant space around the towns for recreation, etc.) *propios*, (viz: an apportionment of lands to be rented for the support of the municipality,) and *dehesas*, or open fields for the pasturage of the cattle of the inhabit-

ants, is prescribed much after the Spanish models, yet the king retains the power to grant lands within those boundaries to new settlers ; and whatever doubt there might remain as to the tenure of the lands to be distributed, (*repartido*) is dispelled by Law 1, of the 12th title of the same book, which provides that the settlers after four years' residence may sell their lands.

California, settled more than two hundred years after those enactments, at a time when the pueblo system was causing much agitation in Spain, attacked as it was by able writers, might expect and indeed enjoyed the full benefit of those circumstances. Settlers received at once grants in fee, the size of town commons was confined to a stated extent, and the power of the crown or its authorized officers for making future grants was distinctly asserted, except as to such lands as should be specifically reserved for municipal purposes.

To the history of the legislation on this subject, set forth in the early part of the opinion of this Court in Hart *v.* Burnett, we find nothing to add ; let us, however, remind the reader that its spirit was to encourage the cultivation of the soil, and that the decrees of the Cortes, of 4th January and 8th June, 1813, were in force in Mexico. But it may be interesting to inquire how that legislation was carried out in California.

Neve found, even in the earliest days of the territory, that special legislation was required. His ordinance, a liberal one for the age, remained the fundamental law. It is republished with amendments in the laws of 1828, but not re-enacted. It was considered then in force however, like many other Spanish laws and ordinances, with the exceptions and reservations noted in the preface to the Leyes Vigentes. His successor found it necessary to depart from his injunctions. The development of the territory had enabled him to discover its wants. In November, 1784, he proposed to grant stock ranchos in the neighborhood of pueblos.

The answer of Galindo Navarro is that of a reactionist. He appeals to the ordinance of Neve and to the Law 6, tit. 5, Lib. 4, of the Recopilation, for the consecration of four lea-

gues, to the common use of towns. Avers that the governor neither could nor ought to make grants of stock tracts within the *termino* assigned to each pueblo. He justifies also the policy of the inhibition on account of the advantages arising from the common enjoyment of pasture, so that cattle "the true wealth of nations," should not be monopolized. He urges that the four leagues should be marked out at once.

Whatever may be thought of the policy of these recommendations from Chihuahua, it can scarcely be pretended that that the assessor did not fairly, though rigorously, state the law. Authority, for the granting of stock lands within the termino of pueblos, must therfore be searched for after the date of the opinion, (1785) if a termino was ever assigned, according to law, to a pueblo in California.

In 1786, under a commission from Pedro Fages, commandante Inspector of California, the Ensign of the Presidio of Santa Barbara proceeded to grant *suertes* to various settlers at Los Angeles. Four years afterward that pueblo contained one hundred and forty-one inhabitants; one was European, seventy-two were Spaniards, the rest were Indians, mulattoes and mestizos. Had only half that number possessed the maximum of cattle provided under Neve's ordinance, viz: fifty head, the four leagues would have been fully stocked at the rates established by experience by experience in California. viz: one thousand head per league. The excentric mode of measuring the space for commons, reccommended by Nava, by which the four leagues would became sixteen, would have to be resorted to whenever three hundred persons possessed the prescribed maximun.

In 1789 Felipe de Neve issued special instructions as regards Los Angeles. They are conformable in substance to the ordinance of that officer, when governor of California, reported by him in 1775, and approved by the king in 1781. His injunctions are very particular. Rules for plaza, streets, a distance of two hundred varas between planting lands and building lots; the size of both kinds of land, reserves for government and religious buildings are specially provided for.

Of the lands susceptible of irrigation. a part shall be distributed (*repartir*) to the settlers, and part shall be reserved for *propios*, and a part as *realengos*, to be granted to future settlers. This last reserve defeated the former. So long as *realengo* lots were to be had for the asking, no settler would take up *propio* lands subject to a yearly rent. The local authorities turned the difficulty. No propios were assigned, and all the land remained as *realengos*, susceptible of gratuitous grant.

In 1791 Pedro de Nava, armed with an assessor's opinion, determined, by a decree, that notwithstanding Art. 81 of the Ordenanza de Intendentes, captains of Presidios may distribute (*repartir*) building lots and lands to soldiers, etc. *Considers* that *four* common leagues shall be enough for pueblos. *Wherefore* are they to be measured off—two toward each cardinal point from the centre, making *sixteen*! Captains shall limit their grants to lands *within* those limits. The land outside remaining at the disposal of the Intendentes.

But notwithstanding all these and many other injunctions, no attempt, (with the partial exceptions hereafter to be noted,) was ever made in California to establish the eminently artificial scheme which the law contemplated. The very fact that the scheme was artificial constituted an obstacle. But there were other reasons. The town saw no object in petitioning for boundaries. The town cattle were not very numerous, for the liberal system of colonization provided remote tracts for the raising of stock. They possessed their common pastures by prescription or by accord with neighbors, as well as they could under authority of special enactment. They felt secure against the encroachment of the granting power, which seldom, if ever, alienated any lands, within their reputed boundaries, without consulting the local authorities. Besides. under this vague tenure, they escaped the annoyance of a complicated administration of propios, of which they had heard somewhat without understanding what it meant, as I shall show hereafter. On the other hand, the executive was not always anxious to press the matter, and, whenever it did, the legislature thwarted its views, and embraced the policy of inaction. Indeed the

subject was full of difficulties. Pueblos were of slow growth; their location transient and precarious. A boundary set to-day might be found very inconvenient in a short time. There were also special obstacles innumerable; jealousies of military commandants or of priests, questions of secularization and suspensions thereof; constant revolutions, apprehensions of foreign speculations or foreign conquest. Besides, as late as 1830, it was deemed questionable whether, even at Monterey and Santa Barbara, there were a sufficient number of persons of common intelligence to form ayuntamientos.*

I cannot too much insist then on the marked distinction which was originally established and continued to exist between the pueblo systems in Spain and California.

In the mother country a stated tract, consisting of some of the most fertile of the town lands, was cultivated by leaseholders, whose rent went to the municipal fund of propios and arbitrios; all the rest of the common lands was incapable, not only of alienation, but of cultivation and enclosure. This state of things was deemed a privilege, and had been acquired by long usage and the concessions of monarchs. The extent of the commons of pasture was not prescribed by enactment.

* The President afterwards said that, under date of 15th December, 1826, he published a *Bando* in the Territory in consequence of the provisions of article twelve, of chapter three of the Decree of the Cortes of 23d of June, 1813, with the object of placing Ayuntamientos in the presidios of Monterey and Santa Barbara, notwithstanding the little aptitude of the individuals who were in those places to fill such offices, but that, nevertheless, it did not seem to him amiss to begin to give their inhabitants the knowledge of that class of political authority which they had never had, with the hope that, when the Ayuntamientos should be installed in due form, there might be persons of information and instruction as to the matters and duties committed to those bodies by the laws. That it being within the duties of the Deputation to take care that they be established in good form, after taking the proper reports according to article one of chapter two of said Decree, he asks that this body now proceed to consolidate this of Monterey. That, with this object, he demanded from the present Alcalde the census of the inhabitants that belong to this jurisdiction, and it results that with the annexed ranchos it has more than one thousand souls; and that, in consideration of all the foregoing, this corporation should proceed to take all the steps that are necessary to form the record of preliminary proceedings (*Espediente instructivo*) which the law requires, beginning by designating *ejidos* to the town; and for his part, he recommends that consideration be had for the ranchos or *sitios*, one of which belongs to the public domain, which, until now, holds it as property for the support of cattle, which, in the way of law or tithes, are kept there and yield support for the troops; the other where the company has always kept its horses; these *sitios* are very near this town, and he asks that they may be separated from those that may be proposed for *ejidos* of the town.—*Extract of the Proceedings of the Territorial Junta of July 23d*, 1830.

Assertion of title for a length of time often constituted the only title. Of course the action of *amojonamiento* furnished an interesting chapter in Spanish litigation.

In California the Spanish system was attempted to be introduced when it was already somewhat declining at home. From the very inception lots were granted in fee to settlers, and the very ordinances that directed that commons should be set out, and that within their limits certain lands (never specified) should be appointed for the municipal fund of *propios*, also directed that certain other lands should be deemed *realengos*, and susceptible of grant in fee ; and, as no classification was ever made, any part of the commons might be considered as belonging to the latter class.

The following translation of a letter of the Governor of California to the municipal authorities of Monterey, may not be uninteresting to the reader. It shows what a complicated scheme the law contemplated, and how much " circumlocution" was required for a town to obtain a grant of land:

" In my former official note I promised to return to you your communication with the report of the *Asesor*, to whose hands I transmitted it. That being now done, I remit it to you and accompany it with an explanation (*aclaracion*) touching the matter, and that is as follows :

" The pueblos which, although having a known *Termino Jurisdiccional*, have not yet their Municipal one marked out (*señalado*) must petition for it to the Deputation through the channel of the political government, and that body will grant it ; for which purpose a correct sketeh (*diseño*) must be enclosed of the tract petitioned for, as your Illustrious Corporation *did last year when it asked that its termino Municipal be assigned.* The termino Municipal being once assigned, and the expenses of the Ayuntamiento being high, it will make petition, through the same channel, that, within the *termino* which has been granted to it, lands be assigned to it for *propios*, and the Ayuntamiento may propose in its petition *those which may appear to answer the purpose best.* To this effect it

will annex to its petition a general account, wherein there shall be included even the petty expenses, as likewise the extraordinary ones, graduated for five years, so that, satisfied of them, the Deputation and the political chief may accede to the prayer. The *termino Municipal* and the *terreno de propios* being once assigned (*señalados*) the Ayuntamiento may assign (*señalar*) that which it needs for *ejidos*. So that there is great difference between the meanings of *termino jurisdiccional*, *jurisdiccion*, *termino municipal*, *terrenos de propios* and *ejidos*. I will make a brief explanation of them that they may be better understood.

"By *termino jurisdiccional*, *jurisdiccion*, *partido* or *Distrito* is understood all that which is comprised within the limits up to which the jurisdiction of the Alcalde or Judge of the pueblo reaches.

"By *termino municipal* is understood, that which the pueblos have assigned to them for the relief of their stock, within which, neither the stock nor the people of neighboring localities, can enter to graze or cut wood without being denounced, unless they have some letter of commonalty.

"The *terrenos* of *propios* are those which are assigned to the Ayuntamientos, so that by renting them to the best bidder, which shall be done for a term which does not pass five years, they may cover with the proceeds the expenses they may have, and the Ayuntamiento may propose the amount of rent charge, mentioning it in the petition which is presented. The lands that remain after the assignment of those of *propios*, and are not granted to any person, remain as vacant (*baldios*) *at the disposal of the government*, and as to those which are granted and are comprised within the *termino Municipal*, a *censo* may be imposed upon them by assigning them as *de propios*, care being taken that all be conformable with the *reglamento* of *propios*.

"And by *ejidos* is understood, the land which is immediate to and in the circumference of the pueblo, which serves as well for the relief of the place as for the convenience of the inhabitants who may keep there a few milch cows or horses for im-

mediate use, and to form promenades or alleys which may serve as an ornament for the entrance of the place ; so that the *ejidos* may have a quarter of a league or half around the town, which is sufficient for its ventilation, and of these lands the Ayuntamiento may dispose for building lots (*solares*).

" If any further doubt should occur you may consult me upon the matter, so that everything may be duly explained. God and Liberty.

" Monterey, January 25th, 1836.

" NICOLAS GUTTIERREZ."

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25,107

EVERY MAN FOR HIS OWN RIGHTS.

DISPOSAL

OF THE

PUEBLO LANDS,

AND

STARTLING DEVELOPMENTS.

By SETTLER BILL,
LEGISLATOR OF 1866.

READ AND REFLECT.

PRICE, 25 CENTS.

GRAND LOTTERY

OF THE

PUEBLO LANDS,

PROPOSED BY

SETTLER BILL,

LEGISLATOR OF CALIFORNIA, 1866.

"And according as the Lord commanded Moses."
JOSHUA, Chap. xiv, verses 2, 3, 4, etc.

It needs but a few hours for an Old Settler to review the history of San Francisco, from 1849 to the present time, to be convinced that its marvelously rapid growth and its institutions are the result of natural causes, developed by the Providential genius of our Republican Government.

To the integrity, vigilance and able counsels of those honorable men who defeated a great many of the villainous acts introduced into our Legislature by political tricksters, and to the energy of our commercial, mechanical and laboring classes; but certainly not to the combined wisdom of our Town Councils and past Legislatures of California: a slight glance over these will reveal stupendous frauds, grievous and irre-

parable injuries, perpetrated by shameless and corrupt officials, whose designing conspiracies, with a privileged few, gobbled up the Pueblo lands and moneys. Their chicanery for the last fifteen years, depriving us of our rights and legal titles, except to a few original grants. They thus drove thousands of men and millions of money out of this city and checked its progress, leaving us to suffer from their political depravity and want of integrity; and to regret that the Administration of that time did not determine to have held military possession of this country, until Law and Order were established, our Harbor and City Front surveyed by its Corps of Engineers, our city laid out by them, not as it is now, a stigma on its past authorities and engineers. The natural defences of our harbor and southern boundary would not be as they are now, mostly in the gripe of presumptuous and unreasonable speculators, favorable to conspirators and to an invading foe. The Farallon Islands and other coast defences would not have been jumped by these Smithite vampires. The Pueblo claim would have been indisputably confirmed and reliably surveyed from the northern boundary of Sanchez Ranch, not as it is now, covered by fraudulent claims and fabricated titles, School Land Acts, Swamp Land Acts, Overflowed Land Acts, City Front and Slip Acts, and all the other dodges of these insatiate gobblers, who are still endeavoring with all their might to take every inch—to bam-

boozle Congress and the Honorable Legislature : and we, the multitude, if we do not immediately organize a Settlers' League, appoint a delegation to wait on our worthy citizen, Hon. Judge Field, and these representatives who have exposed the very dangerous designs of those unconscionable and professional bilks. To request counsel to petition the Legislature to memorialize Congress, and represent the before-mentioned grievances and those which follow ; and all others which we will find out since our awaking from the torpid state of popular indifference.

With the auspices of all these and the scientific knowledge of the Government Engineers, our streets would have been at least double their present width, and constructed differently in every respect, together with the City Front. A public Park would have been laid out in the most desirable of the many suitable localities which are now like the others, and the fenced in pasture lands of the Mission Church, in the firm gripe of the grabbers. Most of the rich pasture lands of the Pueblo are in the same gripe and a few years since were legislated out of this county ; and the boundaries were again shifted to suit the calculations of the professional bilks, but for whom we would have been, for at least fifteen years past, in possession of a Park, approachable from many directions by pleasant roads, where we could refresh ourselves by an ocean bath, a drive along

the beach, or enjoying a sail on the fresh water lakes which, if attended to during those fifteen years, would, to-day, be a delightful resort, surrounded with beautiful evergreens, shrubs, plants and flowers, and well stocked with every variety of the fresh water finny tribes, where our citizen soldiers and heavy artillery would find a safe range without danger or annoyance, to practice all their evolutions, and only a pleasant march from home: This desirable tract is from the southern boundary of this county on an east line running north to take in Lake Honda, to the north line of Sections 13, 14, 15, to the ocean, and west by the ocean; the few claims of the old settlers thereon, at that time, would have left an area large enough for this city. As our opposite and adjoining counties offer more attractive resorts and possess infinitely superior advantages in every other respect to San Francisco, they will eventually outrival it if we do not make it to keep the start which we have now, but was near being lost after the great fire. To do this we must unite our efforts, as before mentioned, to get the counsel of the Hon. Judge Field, and others, with the co-operation of the Press, to inform our representatives of our just expectations, and hope in them to get sufficient powers, to the fullest extent of law and equity, to reclaim every inch of land within the original boundaries which is wrongfully in the possession of the Squatocracy and their professional bilks, and those immaculate

Pharasees who engineered many a humble cot into the centre of a street while the inmates slept, and who beggared others by litigation, succeeding, in ninety-nine cases out of a hundred, by unequitable decisions of law—robbed them of improvements which cost double the intrinsic value of the lots which these unfortunates, with their families, had settled on in good faith, after traveling thousands of miles with this intention. Those now living find themselves in houses belonging to others, paying exorbitant rents, or else in cramped up buildings with cell-size rooms, without sufficient air-space for a person to breathe healthy for five hours, on grave-sized lots called homesteads by these hypocrites, who deluded them to outbid their neighbors to ten times its value, getting a law suit into the bargain; the few square feet which they are compelled to leave at the rear of those living tombs for necessary purposes are, in numerous cases, occupied by a poor cow and other animals, squeezed into a corner in place of the range of rich pasture land, intended for them by the philosophical government of the country. We must remedy this state of things to keep pace with the giant strides which Contra Costa can take with its superior and infinite advantages, governed by wiser and more popular counsellors, who will be governed by Justice, and avoid the rocks and shoals which we are now on. We must get into the channel of progress by immediate reform, of a Pro Bono Publico Law;

regain every inch of land we are justly entitled to, including Swamp and Overflowed Lands. This will be more than five times what the immaculates are striving to make us believe. We will and must progress with the assistance of this Law and the Commission elected by the people; and with reliable Maps, we will find it out mathematically, or at least, plain enough for the humblest comprehension, in the following manner:

Map No. 1, will be an exact survey of the original Pueblo from the northern boundary of Sanchez Ranch, including the swamp and overflowed lands and the Rock Islands in the Bay, with a description in pamphlet form, and full particulars from the Land Offices. This map, with the others, are to be placed in the Commissioners Court, and at all times open to the public.

Map No. 2, is to be of the same size, but only an exact outline; this map is only to show the Peter Smith and grabbers fraudulent claims, the unreasonable claims of the Squatocracy and their professional bilks. The claims of the Autocrat Jumpers of the National defences, Reservations, Mission Church pasture lands, which were fenced in, and usually was one of the first claims granted inside of the Pueblo; of their claims on our rich pasture lands where should now be grazing, ruminating and basking in charge of reliable care-takers, the squeezed-up animals of our citizens. This is where the milk got out of the cocoanut, leaving us to smack the lactiferous

mixtures of swill-fed animals, dug-pus, and P. pools, with a little sweetening, and soda diluted with pipe-water.

Strangers! this is not the worst of the realities. You will learn more in a walk through our Cemeteries, and with a history of the occupants, you will find that some of the Vampires' victims occupy a few hundreds of its six feet by two, fee-simple lots, whose carrying off would make you doubt our civilization and freedom, until you are partly undeceived by the People's Map No. 3 : this is a similar exact outline of No. 1. It shows that we, the People, awoke from our torpid state, and that we succeeded in getting through our honorable citizens one law on the Statutes of California, entitled to Pro Bono Publico, and confirmed under the Constitution and Laws of the United States of America, cancelling all those villainous Acts conflicting therewith, and disgracing their authors, placing us in possession of all our rights, and granting the productions of the Farallon Islands to the orphans of these unfortunate victims of California, and also granting for them fifty acres to each Asylum of those Reservations which are now, like many of the Vampires, in Limbo ; securing the natural defences of our city and harbor, and from the gripe of foreign adventurers, who would aid conspirators and an invading foe.

Map No. 3 will also prove that the People

don or forget those victims, or forgive or forget the vile acts of these autocrat Jumpers. On it is laid off exactly the claims of all the lands and lots granted by legal authorities, and confirmed beyond dispute. The lands and lots of all those whose titles were clouded through jumper claims, and others whose grants were confirmed on equitable grounds: When all such claims are laid off on this Map No. 3, the remainder is taken formal possession of by the City Authorities, surveyed and appraised. The parties in possession, or claiming, must come before the Commissioners with a sketch, the number of acres cultivated, the cost of improvement, if married, paid Poll and Military Taxes, and to prove themselves good citizens. The Commissioners will then decide, according to the merits of their claims, and enter the price according to so much per cent. on the appraisement, which the parties must bind themselves to pay in easy installments, and then get their deeds: these grants will be laid off on the Map with the preceding grants. The beforementioned tract for the Ocean Beach Park is to be secured, giving an equitable exchange or compensation for the improvements and the indisputable claims thereon. Also, Lots for charitable and other institutions, with places chosen by the Corps of Engineers for forts and roads, to reserve portions of the City Front for a Harbor of Refuge for hardy boatmen and fishermen, where all the small craft would be protected in bad weather, and with a proper landing place.

It would be very wise and profitable to the morals of our city to remove the unfortunate Chinese from their infamous dens to some suitable place on our Bay-shore, where a Bungo Town can be constructed, with Chinese assistants and contributions from the Chinese merchants for building rafts, huts and bungoes.

Other very necessary reservations should be chosen in a central part for vegetable and cattle markets, to do away with the present outrageous practice of using the public streets, and making dung pots and corrals of lots in the heart of the city. All of these reservations are, with the previous lots, laid off on this Map—the balance to be divided and subdivided, appraised and numbered. All of the desirable portions are to be laid out into fifty-vara lots. Less desirable places are to be divided into larger blocks; the out-of-the-way places and mountainous lands are to be divided into five and ten-acre lots.

Now, Citizens, we will find a precedent in the Bible for the disposal of these lots, no matter what they number. This plan has proved satisfactory under all circumstances, in all ages, and by all nations, since then to the present time, for the equitable division of equal rights: This plan is by Lottery, and agreeable to the best regulations: one of the fairest rules is to put into a perfect lottery-box a corresponding of tickets with the number of lot, block, section, township

and range, previously checked by the Board of Commissioners.

The time for drawing is to be advertised in the city papers for a certain time, with the full particulars, to qualify under the following laws :

DISABILITIES.	PRIVILEGES.
All the foregoing grantees of lands or lots. All original grantees. All who employed counsel to oppose the Pueblo claims. All who assisted in so doing by false evidence, or otherwise All of others whom the Board Commissioners find unworthy. All outlaws.	All men residents of the Pueblo up to the year 1861, who are now living, and who are not grantees, but who may be in possession of property purchased from original grantees, their heirs, etc. Having paid Poll and Military Taxes, voted at Presidential elections, but who must be free from the Disabilities. This Class to get three draws for themselves, and two for their wives, if living. The balance is to be drawn in like manner, and under the same rules, by all those citizens who have resided in this city during the last five years. To get two draws for themselves and one for their wives, if living.

The parties are to bind themselves same as the grantees, to pay a percentage on the appraisement. The nett proceeds of the lottery of the liquidating tax on clouded titles of the tax for Market fund on original grants of large tracts, are all to go into the city for improvements. Settlers! all this you can accomplish, and more, by forming a Settlers' League, under the Constitution and Laws of the United States of America and of the State of California, to uphold your rights as Freemen. You will see by this that you have not done so yet. Remember, it's never

too late to do good. The sooner it's done the better. Confide more on good common sense than on the chicanery of those immaculate Pharisees, whose deeds you have witnessed, and whose desires are to measure your rights by their rule, the dry and swamp lands by the inch, and the fresh water by the glass: after to fill up the Bay and Bar at the mouth of the Harbor, run a bridge to the Farrallon Islands, so as to collect the dues of the Port, the Wild Birds' eggs, and to net all the fishes within their boundaries.

Toiling Fishermen, and Boatmen of the Bay! Unite with us in the League, or your occupations will be gone. Success will attend us if we persevere. It will be a hard task to persuade them to give up this covetous disposition; to avoid temptation and the Devil of all their sins; to repent; to love God's Laws and

SETTLER BILL.

To repeat every morning the following Poem, and bless its Author, as we all should do:

THE RICH AND THE POOR.

Who shall judge a man from manners?
Who shall know him by his dress?
Paupers may be fit for princes,
Princes fit for something less.
Crumpled shirt and dirty jacket
May beclothe the golden ore
Of the deepest thoughts and feelings—
Satin vests could do no more.
There are springs of crystal nectar

Ever swelling out of tone ;
There are purple buds and golden
Hidden, crushed and overgrown ;
God, who counts by souls, not dresses,
Loves and prospers you and me,
While He values thrones the highest
But as pebbles in the sea.

Man upraised above his fellows,
Oft forgets his fellow then ;
Masters—rulers—lords, remember
That your meanest kinds are men !
Men by labor, men by feeling,
Men by thought, and men by fame,
Claiming equal rights to sunshine
In a man's ennobling name.
There are foam-embroidered oceans,
There are feeble inch-high saplings,
There are cedars on the hills ;
God, who counts by souls, not stations,
Loves and prospers you and me ;
For to him all vain distinctions
Are as pebbles in the sea.

Toiling hands are builders
Of a nation's wealth and fame ;
Titled laziness is pensioned,
Fed and fattened on the same,
By the sweat of other's foreheads,
Living only to rejoice,
While the poor man's outraged freedom
Vainly lifted up his voice.
Truth and justice are eternal,
Born with lovliness and light ;
Secret wrongs shall never prosper
While there is a sunny night.
God, whose world-heard voice is singing
Boundless love to you and me,
Sinks oppression with its titles,
As the pebbles in the sea.

DECISION OF JUDGE PRATT

IN THE

PUEBLO LAND CASE,

DELIVERED AT THE JANUARY TERM, 1868.

W. W. JOHNSON and others,
vs.
THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO.

In the District Court of the Twelfth Judicial District, City and County of San Francisco.

This is a proceeding in equity. The substantial facts alleged are, that plaintiffs are citizens of the United States, inhabitants of the city and county of San Francisco, and tax payers therein; that said city is the successor of the pueblo of Yerba Buena; and, that said pueblo was the creature of Spanish or Mexican laws, prior to the cession of California to the United States; that said pueblo was, and said city now is, of right, entitled to four square leagues of land within said city and county; that

said city and county now holds said lands, with certain exceptions, *in trust*, for the use of its inhabitants; that the object of such trust was, that each of the inhabitants of the pueblo should be entitled, as a matter of right, and as a beneficiary under said trust, to a small lot of land for the purpose of building a dwelling, and making himself a home and a place of business; that, under the customs of said pueblo, said lots were obtained by petition addressed to the chief officer of the pueblo, and upon which a grant was made, vesting in the grantee in full ownership, the title of such lot; that the Board of Supervisors, including the Mayor, are the successors of the Alcalde and Ayuntamiento of said pueblo, and have authority and are charged with the duty of executing said trust; that there are several thousand acres of said lands so belonging to the city outside of what is known as the Van Ness Ordinance line, which are holden by said city for such purposes; that certain parties have taken possession of large tracts thereof, and are holding the same adversely to said city and the plaintiffs, and are thereby preventing plaintiffs and others equally interested with them, from occupying the same as homes for themselves and families; and, it is averred that such appropriation casts a cloud upon the pueblo title and impairs the rights of plaintiffs and causes great and irreparable damage to plaintiffs and other inhabitants of the city, for whose benefit, it is alleged, the action is brought; that defendants, in October, 1866, passed an order entitled Order No. 733; that said order provides, that the city and county thereby relinquishes and grants all the right, title and claim which the said

city and county has, as the successor of the pueblo or as the grantee or patentee of the United States, in and to all of said lands lying outside of the said Van Ness Ordinance line, unto the persons or heirs and assigns of persons, who were, on the 8th of March, 1866, in the possession of said lands, excepting only therefrom certain reservations set apart for public use; that the defendants are taking proofs in behalf of said parties so in possession as to their possessions, and are granting said lands to parties so in possession in large tracts, embracing in certain cases to one individual many acres; that it is the intention of defendants, by said order, to give said lands to such parties so in possession; that plaintiffs in July, 1867, and many others, inhabitants of said city, severally filed with the clerk of defendants a petition, asking for a lot of land whereon to build a house, and specifying the particular lots asked for, and declaring that what was so severally petitioned for did not exceed in quantity 100 varas square, and that the same was vacant and unoccupied; that petitioners had never received grants of any lands within the town, and that each petitioner promised to build a house on the lot asked for within a year, and that the lands so petitioned for constituted no part of any reservation, park, cemetery, square, plaza, or other portion of lands set apart to public uses; that said petitions were presented to defendants at their regular meetings, but that they have failed and refused to grant the prayers of said petitioners or any of them; and, further, that defendants threaten to destroy said petitions, unless taken away within ten days after notice given so to do; and, for relief, plaintiffs pray

the Court to restrain defendants from granting the lands outside of the Van Ness Ordinance line in quantities exceeding 100 varas square, upon proof of possession only, as provided in said Order No. 733; that defendants be enjoined from destroying said petitions, and that they be restrained from carrying into execution said Order No. 733; and, further, that the Court declare the nature of said pueblo title so held by said city and county, as well as the nature of the trust to which said lands are subject; also, the officers by whom the same is to be executed, together with the manner of its execution; and, for such other relief as the alleged facts entitle plaintiffs to have.

The case stands upon demurrer to the matters charged in the complaint; and, the questions involved are of the highest importance to a very large number of persons interested in their correct solution. It is to be regretted that it is impossible for the Court to bestow the needed attention upon them, occupied as it has constantly been since its submission by the pressing duties of jury trials. Besides, the complaint is not as carefully drawn as it should have been; it should have contained a statement only of the *facts* constituting the alleged cause of action. Ignoring, as it does, this proper feature, it is found to contain alleged facts and conclusions of law so intermingled as to cause difficulty in their separation. This is an annoyance to which the Court ought not to have been subjected, and probably would not have been but for haste in in its preparation. As it is, the *facts alone* must be considered as admitted by the demurrer, howev-

er intermingled they may be with assertions of law in the averments of the complaint. In this opinion we shall deal only with what is thought essential to understand and determine the main matters in the case, and nothing beyond.

It being admitted that the legal title to the lands, which constitute the subject of this action, is now in the municipal corporation, over the affairs of which the defendants exercise certain limited and defined powers, the questions mainly to be determined are *whence*, and *how*, such legal title became so vested, and to what *uses*, as well as *where* is now lodged the power, together with the means to render such uses effectual. These constitute the principal inquiries, which must be answered.

That the legal title, now so vested in trust in the city and county, came either mediately or immediately from the government of Spain or Mexico, or that of the United States, is also admitted; but, whether from the one or the other, it is insisted makes a material difference in the character of the trust in which the same is now holden. It was not derived from Spain through any grant or concession. Historically, it is known, that the entire lands embracing the city and county remained, for fourteeen years and upward, after all Spanish connection with the country had ceased, the same as for a century before, entirely vacant and unappropriated. It is true, however, that within the pueblo claim of four leagues there were, when the country was under Spanish rule, a small mission establishment for the education of Indians, and a

small military post, distant from each other several miles; but, both were in decay at the date of Mexican Independence as compared with their condition in former years, and they in no way affect the present question. The earliest claimed existence of the village or pueblo of Yerba Buena was in the latter part of the year 1834. This was many years after the Mexican nation had thrown off all Spanish rule and sovereignty in California, and other parts of Mexico.

It is undeniable that the source of the title, whatever it is, must be found in some *sovereign* authority, since it could emanate nowhere else. It certainly did not come from the Mexican Empire, under and through Iturbide, because the governmental rule and powers of the latter ceased long before the establishment of the town. If it did not come from Spain, then, it is claimed by plaintiffs, that the title came through the Mexican Nation, under and in virtue of laws connected with the establishment of towns and villages upon the public domain, which laws, having been made during Spanish rule, were recognized by Mexico as in force in the year 1834, when the pueblo of Yerba Buena was established.

It having been adjudged by the Supreme Court of the State in several cases, as also by the Supreme Court of the United States, in at least one case, that a pueblo existed at the place where is now San Francisco, previous to the cession of the country by Mexico to the United States; and, that such pueblo had some sort of a right or title to lands, it, of course, is closed to us *now* to look be-

hind such determinations. What that right or title was, at the time of the decision referred to, is a most important matter to be solved.

It can safely be assumed, that if such title was absolute and complete to any specified tract of land, at the time of the cession to the United States, neither action of the latter Government, under the law of 3d March, 1851, and other laws in aid thereof, nor any Congressional grant of the lands to be disposed of under such laws, could add to or take anything from such title.

Perfect titles to lands, whether in individuals or corporations, derived from any former sovereign proprietor of the country, could not, of course, legally be changed or affected as to proprietorship by any action of the Government of the United States, whether attempted to be accomplished through decrees of tribunals for that purpose created, or through Congressional enactments. The Government could only rightly act upon and affect the tenure or title to lands which had not passed into private proprietorship before the cession. Its action, in whatever form exerted, could only legally affect such lands the property in which, united to the power of disposition, remained at the date of the cession in the Government of Mexico, and was thereby in condition to pass to the United States, as its successor in proprietorship and power of control.

At that date, where, then, were vested as to the lands in question, this proprietorship and power of control? Through laws established under Spanish rulers, and recognized by the Mexican Government

as operative in California in 1834, the Supreme Court of this State has adjudged that San Francisco was, on the seventh day of July, 1846, and prior to that date, a pueblo, entitled to and possessing all the rights which such Spanish laws, recognized by Mexico as in force, conferred upon such municipal corporations; that such pueblo had a certain right or title to the lands within its general limits, and that the portions of such lands which had not been set apart or dedicated to common use or to special purposes, could be granted in lots by its municipal officers to private persons in full ownership; and that the authority to grant such lands was vested in the *Ayuntamiento* and *Alcaldes*, or other officers who at that time represented it, or who had succeeded to its powers and obligations. It has, however, been at no time adjudged by the Supreme Court of this State, with any degree of definiteness whatever, in *what* such right or title consisted, and therein have arisen much confusion and contrariety of views amongst persons claiming to be interested. The nearest approach to precision on the subject, by that tribunal, is found in Hart vs. Burnett, 15 Cal. R., p. 542, where it was declared that, "It follows, from what has been already stated, that when, near the close of 1834, a municipality was erected at the Presidio of San Francisco, by the orders of the Governor and Territorial Deputation of California, and that place was officially recognized as a pueblo, and its organization completed by the election of municipal officers, provided for by law, such pueblo became *ipso facto* vested with some right or title to four square leagues of land, measured either in a square or prolonged form, from the Presidio

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Square as a general central point; excepting so much of the space within such general limits as might not be susceptible of granting on account of its being water, the private property of individuals or corporations, or lands dedicated to or reserved for other purposes." Again, on page 543, "It appears, from official maps made under the direction of the United States Surveyor-General and the Superintendent of the U. S. coast survey that the old Presidio of San Francisco was situated near the middle of the northern extremity of the peninsula formed by the ocean and the bay of that name; that the width of the peninsula, as far south as the Mission creek, is less than two leagues, and that still further south to the Sanchez rancho the average width is about two leagues, although two or three points, as Lobos and Devisadero, project somewhat beyond these points, very nearly corresponding with indentations, as Mission Bay and Merced Lake, on the opposite sides. Of course the pueblo could acquire no right or title to the ocean or bay, and consequently, according to the law of its foundation, the four square leagues would be taken in a prolonged instead of a square form." Unfortunately all this in no way characterized or defined *in what such right or title consisted.* But the Court proceeded, in the same case, page 549, to say: "If the Governors of California have granted lands within the general limits of pueblos, it will be presumed, unless the contrary be shown, that such grants were made in accordance with the objects and uses for which such lands have been assigned and dedicated by the laws to the pueblos. The whole matter was subject to the control and direction of the Gover-

nor and Territorial Deputation, and the official acts of such officers, within the general scope of their powers, are presumed to have been done by lawful authority."

The Circuit Court of the United States for California, Justice Field presiding, in the opinion confirming the claim of the city, filed October 31st, 1864, on the same subject declared:

"It is difficult to determine with precision the exact character of the right or title held by pueblos to the lands assigned to them. The Government undoubtedly retained a right to control their use and disposition, and to appropriate them to public uses, until they had been vested in private proprietorship. Numerous laws have been cited to show that the title remained absolutely in the Government."

These words "right or title" are used in a very general and indefinite sense, but in the admissions made that *the whole matter of the alienation and disposition of lands claimed by pueblos was subject to the direction and control of the Governor and Territorial Deputation*, is found a most important element in determining the character of the right or title of such pueblos in and to the lands within their limits. *That only* is such a right or title to land which unites, in the same person or corporation, the sole power to control its use and alienation, which can be deemed *absolute*, or one in fee.

A man or a corporation may be the sole owner of a tract of land as his or its absolute property, subject to his or its right of using, abusing, or doing what he or it will with it, without any present or future right in another to exercise any control

over it. Or, he or it may have a right to a temporary use and enjoyment of land, while it remains undisposed of to another by him or it, in which is vested alike the authority to control the use and direct the instrumentalities of its alienation. *This*, it will readily be perceived, is something distinct from the *title* by which such property is held, or the mode in which it may be acquired.

The property or interest which one has in lands is properly expressed by the word *estate*, and the extent or degree of this interest is indicated by the terms by which different estates are designated. Thus an estate in fee simple conveys at once the idea of an interest of an unlimited duration, without any words of explanation. It is the largest possible estate which can be holden in lands, being as it is an absolute estate in perpetuity, and one of its most important incidents *is the right of free and unlimited alienation.*

The nature of pueblo *rights to land* can be properly understood only by correctly comprehending the *purposes* for which they were created, and the *powers* vested in the pueblo authorities touching them. As we understand the subject, such rights and powers were substantially as follows: Under the laws of Spain, where ten or more families desired to establish themselves as villagers on the public domain, where lands were found in sufficient quantity to warrant the starting of a village or town, it was usual for such families to go and settle themselves. This was sometimes done with the previous knowledge of the governmental officials, and at other times without it. After notification to the rightful authorities of the country of

such establishment, it was expected that the latter would cause to be laid or marked off: 1st. A suitable portion of lands to be divided into and for use as *house* lots. 2d. An appropriate quantity and quality for *sowing* or *planting* lots or grounds for such of the villagers as might want and apply for them. 3d. Other lands for town uses, for public buildings, and lots to be rented, wherewith to obtain municipal revenue. 4th. A reasonable quantity immediately outside of the place intended for buildings, etc., to be used by the people in common as *pleasure grounds*, and other purposes. And 5th. Outside of and beyond the four kinds of land first named, a still larger quantity, intended for common use by all the inhabitants of the town or village *for purposes of pasturage.* This latter portion in most pueblos comprised the larger part of all the lands within the limits of four square leagues, which it was thought desirable to mark out for the use of the inhabitants of towns or pueblos who might desire to thus become established on the public lands. The system did not contemplate, *because not necessary to accomplish its objects*, that the fee, or absolute title, to any part of the four square leagues *should ever be vested in the pueblo or town in its municipal or corporate character*; but, it was intended by the laws on that subject, that the proper authorities of the town should be clothed with the power, in the nature of an agency from the sovereign power of the country, on proper application to be made by such of the inhabitants of the town as wanted them, to grant house lots as well as sowing or planting lots, within the proper limits, in private proprietorship, if such applicants

should be found to be suitable persons and in need of what was solicited. Like powers of alienation were also retained and often exercised, over the granting of house lots and planting grounds, by the national sovereign, and by such others to whom he chose to delegate the authority. These powers were exercised co-ordinately between them, but most generally by the municipal officers. All grants of house lots and sowing lots, and no other could be made by the pueblo authorities, were directed to be made in the name of the national sovereign, and this demonstrates where the fee was deemed to be lodged before any grant of pueblo lands was made. [See subdivision 18 of Plan of Pitic, and Sec. 6 of Regulations of Governor Neve for Californa in 1779.] Power, however, to alienate either the lands designed for municipal revenue, or the pleasure grounds of the town, or the commons for pasturage by its inhabitants, never was conferred on the authorities of the pueblo; and whenever grants of any of the latter three kinds of lands were made within the limits of pueblos, (and they were of rare occurrence and only intended to be in harmony with the interests of the town), they could be and only were effectual when made by the sovereign proprietor, or such of its officers as were clothed with power to alienate portions of the public domain. If, at any time after the settlement and establishment of a pueblo, it was found necessary to lay off a larger amount than was originally designed for either house lots, sowing lots, revenue purposes, pleasure grounds, or commons for pasturage, the power to make such changes and enlargements alone appertained to officers exercising national au-

thority; and it was always recognized as competent for the sovereign, under the pueblo system, whenever it became apparent that any of the lands within the limits of a pueblo, not granted or passed into private proprietorship, were no longer necessary for the uses to which they were designated and intended, they could be, and when thought proper were, granted away by the sovereign proprietor for other and different purposes. Under the same system, where pueblos were established on the public lands, and the designation of the different parts for town uses was delayed by the rightful national or territorial officers, as was the case at Yerba Buena, still the pueblo authorities often assumed and exercised the power to grant house lots in anticipation of their rightful powers in that behalf, which by the laws they would only become legally invested with after the legitimate demarcation of lands should be made for town uses. Such acts of attempted alienation, by way of grants made by the local officers of the town, it is presumed were treated and recognized as confirmed by the rightful public authorities of the nation, upon the separation of the proper town lands from the public domain. Justice Field, in the opinion before quoted from, when speaking of the extent of the lands in which the pueblo of Yerba Buena was interested says, "it is not pretended that such lands were ever marked off and surveyed by competent authority;" and further, that "the question presented must therefore be determined by the laws of Mexico at the date of the conquest."

From all this it manifestly results, that the absolute title, or fee, with the exclusive power of alienation,

in and to all the ungranted lands embraced within the claimed limits of the pueblo of Yerba Buena, immediately previous to the treaty of cession of May 30, 1848, remained and was in the Mexican nation. Its rightful successor in that behalf, after such treaty, became and was the United States, because the latter succeeded alike to the national sovereignty in California as also to the fee of all lands therein, together with the power of disposition, which were at that date vested in its predecessor. Whatever equities subsisted in individuals or corporations in and to any part of such lands, so holden in fee by Mexico, and to which the United States succeeded, the latter, of course, became immediately charged therewith, as was the power whence the cession came. Such equities became no stronger against the United States than they were against Mexico; and, the United States had no greater obligation resting upon them, either in favor of individuals or town, than had Mexico. What the rights were under the pueblo system, against the national government previous to the cession, and the relations they sustained to each other as to what are called the pueblo lands, we have already seen. Undoubtedly, there was a duty on the part of the new government to recognize and validate the grants made for house lots by the rightful authorities of the town in Yerba Buena, made previous to the cession of the country by Mexico. That duty was amply performed by the United States through the rule of evidence furnished against itself, and in favor of the grantees of such lots, by Section 14, of the Act of March 3d, 1851, for the settlement of private land claims in California. That section ex-

pressly provided that no claim need be presented to the Board of Land Commissioners, by any individual claimant, to any city, town, or village lot, which city, town or village existed on the 7th day of July, 1846, but that the claim for and embracing all such lots, held under a grant from any corporation or town to which lands may have been granted for the establishment of a town by the Spanish or Mexican government, should be presented by the corporate authorities of such town, and declared that the fact of the existence of such city, town or village July 7th, 1846, being duly proved, should be *prima facie* evidence of a grant to such corporation. Whether it was intended by that section that towns should present to the Board claims for more land than had been granted by the authorities thereof to private individuals, previous to the passage of the Act, including the streets and plazas, may well be doubted. Such limited construction would seem to fully accomplish the fulfilment of all the duty in that respect incumbent on the United States. As a fact, however, the city, as a successor of the old pueblo of Yerba Buena, asserted in its petition to the Board of Land Commissioners, a claim to a great many thousand acres of land, while the grants made by the town at that date were limited to a few hundred acres. After confirmation to the city, by the Board of Land Commissioners, and while the same stood on appeal to the United States District Court, Congress by an Act of July 1st, 1864, recognized and affirmed the Van Ness Ordinance, so called, and thereby relinquished to the city, for the use of the several town grantees, their heirs and assigns, the lots theretofore

granted by the town authorities, and also to the actual *bona fide* possessors, their heirs and assigns, the lands actually possessed by them on the first day of January, 1855, and of which they continued in possession up to June 20th of the same year. Afterward, the determination of the appeal, then pending in said District Court, having been transferred to the U. S. Circuit Court, the latter, by its decree of May 18th, 1865, confirmed to the city, in trust for the use of its inhabitants, the four square leagues claimed by the city, excepting out therefrom reservations previously made by the United States for its public uses. That decree was not final; it did not operate to pass the fee of the lands out of the United States. Such fee, under the laws through which the decree was made, could only pass out of the United States after it should become final, and *after the issuance of a patent*, pursuant to the laws in that behalf provided. The decree, so obtained was appealed from the Supreme Court of the United States, and the *effect* of such appeal, until final action thereon in the Supreme Court of the Uuited States, worked a *suspension* of all further proceedings towards obtaining a patent under it. In the meantime, and while such appeal was pending, the Congress of the United States, on the 8th day of March, 1866, in an Act, entitled "An Act to quiet the title to certain lands within the corporate limits of the city of San Francisco," enacted, "That all the right and title of the "United States to the lands situated within the cor- "porate limits of the city of San Francisco, in the "State of California confirmed to the city of San "Francisco, by the decree of the Circuit Court of "the United States, for the Northern District of

"California, entered on the 18th day of May, 1865, "be, and the same are, hereby relinquished and "granted to the said city of San Francisco and its "successors, and the claim of the said city to said "lands is hereby confirmed, subject, however, to "the reservations and exceptions designated in said "decree, and upon the following *trusts*, namely: "that all the said land not heretofore granted to "said city, shall be disposed of and conveyed by "said city to parties in the *bona fide* actual posses- "sion thereof, by themselves or tenants, on the pas- "sage of this Act, in such quantities and upon such "terms and conditions as the Legislature of the "State of California may prescribe, except such "parcels thereof as may be reserved and set apart "by ordinance of said city, for public uses; *pro- "vided*, however, that the relinquishment and "grant by this Act, shall not interfere with, or "prejudice any valid adverse right or claim, if such "exist to said land, or any part thereof, whether "derived from Spain, Mexico, or the United States; "or preclude a judicial examination and adjust- "ment thereof."

By this Act of Congress, and the previous one of July 1st, 1864, the Government of the United States, by words of present grant and relinquishment, was divested of the legal title to all the lands in question, so derived, as before shown, from Mexico; and, the same thereafter became invested in the manner and upon the *trusts* in said Acts provided. In virtue of them, on their passage, all the right, title and interest of the United States passed to the city, for the use and upon the trusts in each of said respectively named. No further action by the Government or its officers, in such case, was neces-

sary to pass the title, since such Congressional grants passed it as completely as could a United States patent.

The "right or title" which the town of Yerba Buena had to lands, and to which the city succeeded, is simply what has been hereinbefore defined, and also a perpetual usufruct in and to the streets, public squares and other places reserved for and dedicated to public uses.

The title to such lands in the town is in the nature of one founded on prescription, and the right to regulate the use as to such, after the treaty of cession, did not devolve on the United States, but on the Legislature of the State formed out of California. In the case of New Orleans vs. the United States, 10th Pet. 662, the public quay, which was the subject of the suit, belonged to the city through dedication to public uses long before the treaty of cession of 1803. The right of individuals, in and to *commons*, adjacent to towns in Missouri, came, as in the case here, through Acts of Congress.—Strother vs. Lucas, 12th Pet. 410.

As we understand it, and as is thought is demonstrated by the foregoing, the legal title to the lands embraced within the four square leagues confirmed to the city by the decree of the Circuit Court of the United States for California, May 18, 1865, and made final and effective to divest proprietorship out of the United States by the Congressional grants of July 1, 1864, and March 8, 1866, (except reservations made for the use of the United States, streets, public squares and other portions reserved and to be reserved by the city for its public uses,) is now vested as follows:

1st. As to lands granted by the rightful author-

ities of the old town, whether Mexican or American, the title is vested in the grantees thereof, and their heirs and assigns.

2d. As to those lands claimed through grants made by Governors of California, the title is vested through patents in the claimants thereof, their heirs and assigns, which patents were obtained through proceedings had under the act of Congress of March 3d, 1851, and other acts supplementary thereto.

3d. As to the lands not granted by the town authorities, being inside of the Van Ness Ordinance, the title is vested in the parties who were in the actual possession of them, by themselves or tenants, and their heirs and assigns, at the times in said ordinance named.

4th. As to the lands commonly called outside lands, except reservations made for the use of the United States, the title is vested in the city of San Francisco, *in trust*, to be disposed of and conveyed by said city to parties and their heirs and assigns, who were in the *bona fide* actual possession thereof, by themselves or tenants, on the 8th day of March 1866, in such quantities and upon such terms and conditions as the Legislature of California may prescribe, except such parcels as may be reserved and set apart by ordinance of said city for public uses.

Having reached the foregoing conclusions through a series of principles of law believed to be applicable to the facts stated in the complaint, and which principles, it is thought, will be found, on careful examination, to be sustained by binding authority, it only remains to say that the acts complained of against defendants were but in the line of their duty, and the demurrer is, therefore, sustained.

O. C. PRATT, Judge.

STATE
BOOK BINDERY.
1889